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ADOPTED CODE

FOR THE TERRITORY OF

OKLAHOMA,

Containing that portion of the General
Statutes of the State of

NEBRASKA,

As Compiled and Annotated by

GUY A. BROWN, ESQ.,

Which was extended over said Territory by Act of Congress.

Also the Laws of the United States in force in said Territory; the Proclamations of the President; the Regulations of the Interior Department affecting Oklahoma and Indian Territories; the Recent Public Land Legislation; a List of Territorial Officers, and many other official matters for use by Courts, Attorneys, Officers and People.

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AUTHENTICATION.

SEC. 4. These Statutes, when published, shall be accompanied by a certificate of the compiler, and thereupon the said Statutes, and all editions founded thereon, shall be competent evidence, in all the courts of this State, without further proof or authentication. *(Session Laws, 1885, page 372.)*

LINCOLN, NEBRASKA, July 1, 1887.

I, Guy A Brown, appointed by the State of Nebraska, to compile the General Laws of said State, hereby certify that the several acts contained in this volume are copies of the original rolls on file in the office of the Secretary of State.

GUY A. BROWN,
Compiler.

Wis S. Mr. 28 '28

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OF THIS FIRST VOLUME OF

OKLAHOMA LAWS,

AS COMPILED BY

LE GRAND BYINGTON,

OF THE TOPEKA BAR.

BY AUTHORITY.

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EXPLANATORY.

By the eleventh section of the recent Act of Congress, to organize the Territory of Oklahoma, it was enacted, that the provisions of some thirty chapters of "the Compiled Laws of the State of Nebraska," in force November 1, 1889, *in so far as they are locally applicable*, are extended over said Territory. (See page 11, *post.*)

It was a novel species of Legislation, quite in harmony with the unique methods whereby the country had been "opened to settlement."

As the decision of the question, what parts of these designated chapters are "locally applicable," must ultimately rest with the Courts, the compiler of this volume was embarrassed in determining his course. About four hundred pages of the Nebraska book, were occupied by these chapters, but a glance was sufficient to show that large numbers of sections therein, were irrelevant, "inapplicable," or repugnant to the United States laws, which are paramount in the Territory.

The compiler, therefore, within the month allowed to him by the tardy action of Congress, has made an abridgment of the indicated "chapters," retaining all the provisions thereof that are obviously applicable to the Territory, and omitting, or epitomising the extraneous, verbose and immaterial clauses, that would have encumbered rather than aided the enforcement of the essential provisions, and has thereby cheapened the volume to the people, whose immediate needs it supplies.

LEGRAND BYINGTON,
Compiler.

TOPEKA, May, 1890.

ADOPTED CODE
FOR
OKLAHOMA TERRITORY.

PART I.

CESSION OF OKLAHOMA LANDS, BY THE CEEEK NATION.

ARTICLE I. That the Muscogee (or Creek) Nation, in consideration of the sum of money hereinafter mentioned, hereby absolutely cedes and grants to the United States, without reservation or condition, full and complete title to the entire western half of the domain of the said Muscogee (or Creek) Nation lying west of the division line surveyed and established under the treaty of eighteen hundred and sixty-six, and also grants and releases to the United States all and every claim, estate, right, or interest of any and every description in or to any and all land and territory whatever, except so much of the said former domain of the said Muscogee (or Creek) Nation as lies east of the said line of division, surveyed and established as aforesaid, and is now held and occupied as the home of said nation.

* * * * * * *

WHEREAS, The Muscogee (or Creek) Nation of Indians has accepted, ratified, and confirmed articles of cession and agreement by act of its national council, approved by the principal chief of said nation on the thirty-first day of January, eighteen hundred and eighty-nine, wherein it is provided that the grant and cession of land and territory therein made shall take effect when the same shall be ratified and confirmed by the Congress of the United States of America, Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That said articles of cession and agreement are hereby accepted, ratified, and confirmed.

SEC. 2. That the lands acquired by the United States under said agreement shall be a part of the public domain, but they shall only be disposed of in accordance with the laws regulating homestead entries, and to the persons qualified to make such homestead entries, not exceeding one hundred and sixty acres to one qualified claimant. And the provisions of section twenty-three hundred and one of the Revised Statutes of the United States shall not apply to any lands acquired under said agreement. Any person who may enter upon any part of said lands in said agreement mentioned, prior to the time that the same are opened to settlement by act of Congress shall not be permitted to occupy or to make entry of such lands or lay any claims thereto.

Approved March 1, 1889.

[The section 2301 of the Revised Statutes, referred to in the foregoing section, reads as follows, to wit:

SECTION 2301. Nothing in this chapter shall be so construed as to prevent any person who has availed himself of the benefits of section 2289 from paying the minimum price for the quantity of land so entered at any time before the expiration of five years, and obtaining a patent therefor from the government, as in other cases directed by law, on making proof of settlement and cultivation as provided by law granting pre-emption rights.]

OKLAHOMA LAND TITLES--HOW ACQUIRED

AN ACT

Making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and ninety, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SEC. 12. That the sum of one million nine hundred and twelve thousand nine hundred and forty-two dollars and two cents be, and the same hereby is, appropriated, out of any money in the Treasury not otherwise appropriated, to pay in full the Seminole Nation of Indians for all the right, title, interest, and claim which said nation of Indians may have in and to certain lands ceded by article three of the treaty between the United States and the said nation of Indians, which was concluded June fourteenth, eighteen hundred and sixty-six, and proclaimed August sixteenth, eighteen hundred and sixty-six, and which land was then estimated to contain two million one hundred and sixty-nine thousand and eighty acres, but which is now, after survey, ascertained to contain two millions thirty-seven thousand four hundred and fourteen and sixty-two hundredths acres, said sum of money to be paid as follows: One million five hundred thousand dollars to remain in the Treasury of the United States to the credit of said nation of Indians and to bear interest at the rate of five per centum per annum from July first, eighteen hundred and eigty-nine, said interest to be paid semi-annually to the treasurer of said nation, and the sum of four hundred and twelve thousand nine hundred and forty-two dollars and twenty cents, to be paid to such person or persons as shall be duly authorized by the laws of said nation to receive the same, at such times and in such sums as shall be directed and required by the legislative authority of said nation, to be immediately available; this appropriation to become operative upon the execution by the duly appointed delegates of said nation, specially empowered to do so, of a release and conveyance to the United States of all the right, title, interest, and claim of said nation of Indians in and to said lands, in manner and form satisfactory to the President of the United States, and said release and conveyance when fully executed and delivered, shall operate to extinguish all claims of every kind and character of said Seminole Nation of Indians in and to the tract of country to which said release and conveyance shall apply, but such release and conveyance, and extinguishment shall not inure to the benefit of or cause to vest in any railroad company any right, title, or interest whatever in or to any of said lands, and all laws and parts of laws so far as they conflict with the foregoing, are hereby repealed, and all grants or pretended grants of said lands or and interest or right therein now existing in or on behalf of any railroad company, except rights of way and depot grounds, are hereby declared to be forever forfeited for breach of condition.

SEC. 13. That the land acquired by the United States under said agreement shall be apart of the public domain, to be disposed of only as herein provided, and sections sixteen and thirty-six of each township, whether surveyed or unsurveyed, are hereby reserved for the use and benefit of the public schools, to be established within the limits of said lands under such conditions and regulations as may be hereafter enacted by Congress.

That the lands acquired by conveyance from the Seminole Indians hereunder, except the sixteenth and thirty-sixth sections shall be disposed of to actual settlers under the homestead laws only, except as herein otherwise provided (except that section two thousand three hundred and one of the Revised Statutes shall not apply): *And provided further*, That any person who having attempted to, but for any cause, failed to secure a title in fee to a homestead under existing law, or who made entry under what is known as the commuted provision of the homestead law, shall be qualified to make a homestead entry upon said lands: *And provided further*, That the rights of honorably discharged Union soldiers and sailors in the late civ l war as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes shall not be abridged: *And provided further*, That each entry shall be in a square form as nearly as practicable and no person be permitted to enter more than one-quarter section thereof, but until said lands are opened for settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall ever be permitted to enter any of said lands or acquire any right thereto.

That all the foregoing provisions with reference to lands to be acquired from the Seminole Indians including the provisions pertaining to forfeiture shall apply to and regulate the disposal of the lands acquired from the Muscogee and Creek Indians by articles of cession and agreement made and concluded at the city of Washington on the nineteeth day of January in the year of our Lord eighteen hundred and eighty-nine.

TOWN SITES.

The Secretary of the Interior may, after said proclamation and not before, permit entry of said lands for town-sites, under sections twenty-three hundred and eighty-seven and twenty-three hundred and eighty-eight of the Revised Statutes, but no such entry shall embrace more than one-half section of land.

CHEROKEE LANDS.

SEC. 14. The President is hereby authorized to appoint three commissioners, not more than two of whom shall be members of the same political party, to negotiate with the Cherokee Indians and with all other Indians owning or claiming lands lying west of the ninety-sixth degree of longitude in the Indian Territory for the cession to the United States of all their title, claim, or interest of every kind or character in and to said lands, and any and all agreements resulting from such negotiations shall be reported to the President and by him to Congress at its next session and to the council or councils of the nation or nations, tribe or tribes, agreeing to the same for ratification, and for this purpose the sum of twenty-five thousand dollars, or as much thereof as may be necessary, is hereby appropriated, to be immediately available: *Provided*, That said Commission is further authorized to submit to the

Cherokee Nation the proposition that said nation shall cede to the United States in the manner and with the effect aforesaid, all the rights of said nation in said lands upon the same terms as to payment as is provided in the agreement made with the Creek Indians of date January nineteenth, eighteen hundred and eighty-nine, and ratified by the present Congress; and if said Cherokee Nation shall accept, and by act of its legislative authority duly passed, ratify the same, the said lands shall thereupon become a part of the public domain for the purpose of such disposition as is herein provided, and the Pesident is authorized as soon thereafter as he may deem advisable, by proclamation open said lands to settlement in the same manner and to the same effect, as in this act provided concerning the lands acquired from said Creek Indians, but until said lands are opened for settlement by proclamation of the President, no person shall be permitted to enter upon and occupy the same, and no person violating this provision shall be permitted to enter any of said lands or acquire any right thereto.

SEC. 15. That the President may whenever he deems it necessary create not to exceed two land districts embracing the lands which he may open to settlement by proclamation as hereinbefore provided, and he is empowered to locate land offices for the same appointing thereto in conformity to existing law registers and receivers and for the purpose of carrying out this provision, five thousand dollars or so much thereof as may be necessary is hereby appropriated.

Approved, March 2, 1889.

LAND OFFICE INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., April 1st, 1889.

Registers and Receivers of the United States Land Offices, at Guthrie and Kingfisher Stage Station, Indian Ty.

GENTLEMEN: The 12th, 13th, 14th and 15th sections of an act of Congress, approved March 2, 1889, entitled "An act making appropriations for the current and contingent expenses of the Indian Department and for fulfilling treaty stipulations with various Indian tribes for the year ending June 30, 1890, and for other purposes," (a copy of which sections is hereto attached,) embrace provisions for the disposal of certain lands therein designated. Pursuant to these provisions, the President has issued his proclamation of the twenty-third instant (copy also attached,) opening a described portion of the lands so designated for settlement and entry from and after a date therein given—and your offices have been established for the disposal thereof, accordingly.

These lands have been surveyed, and you will be supplied with the township plats, tract books, blank forms, official circulars, and other requisites for the proper transaction of your business in connection therewith.

You will observe that the statute reserves sections 16 and 36 in every township for school purposes and the proclamation reserves for government use and control the following, viz: one acre of land in square form in the north west corner of section nine [subsequently changed to the N. W. corner of the N. E. ¼ of S. E. ¼ of Sec. 8, and a military reservation made of the S. E. ¼ of Sec. 34, T. 12, R. 3 W., by Executive order, dated April 19, 1889,] in township sixteen north, range two west, of the Indian Meridian in Indian Territory, and also one acre of land in the south east corner of the north west quarter of section fifteen, township sixteen north, range seven west of the Indian Meridian in the Indian Territory. The remainder of the lands are made subject to entry by actual settlers under the general homestead laws with certain modifications.

Your attention is directed to the general circular issued by this office January 1, 1889, pages 13 to 30 inclusive, 42 to 57 inclusive, and 86 to 90 inclusive, as containing the homestead laws and official regulations thereunder. These laws and regulations will control your action, but modified by the special provisions of the said act of March 2, 1889, in the following particulars, viz:

1. The rule stated on 17th page of said circular under the title, "Only one homestead privilege to the same person permitted," is so modified as to admit of a homestead entry being made by any one, who, prior to the passage of said act, had made a homestead entry, but failed, from any cause, to secure a title in fee to the land embraced therein, or who, having secured such title, did so by what is known as the commutation of his homestead entry. See section 2301, U. S. R. S., page 88, and statement on page 19 of said circular under the title "Commutation of Homestead Entries." A person desiring to make another entry under this provision will be required to make affidavit to the facts necessary to entitle him to do so under the laws and rules, designating in the affidavit his former entry by description of the land, number and date of entry, with the name of the land office where made, or other sufficient data to admit of readily identifying it on the official records, which affidavit you will transmit with the other entry papers to this office.

With regard to persons making homestead entries and failing to acquire title thereunder, or commuting them, after the passage of said act of March 2, 1889, the rule stated on page 17 of said circular, as to second homesteads, is operative, and will be enforced, in relation to these lands as well as others.

2. The statute provides for the disposal of these lands "to actual settlers under the homestead laws only," and while providing that "the rights of honorably discharged Union soldiers and sailors in the late civil war as defined and described in sections 2304 and 2305 of the Revised Statutes, (See pages 24, 25 and 26 of said circular) shall not be abridged," makes no mention of sections 2306 and 2307 thereof, under which soldiers and sailors, their widows and orphan children are permitted, with regard to the public lands generally, to make additional entries, in certain cases, free from the requirement of actual settlement on the entered tract—see pages 26 and 27 of said circular. It is therefore held that soldiers' or sailors' additional entries cannot be made on these lands under said sections 2306 and 2307, unless the party claiming will, in addition to the proof required on pages 26 and 27 of said circular, make affidavit that the entry is made for actual settlement and cultivation, according to section 2291, as modified by sections 2304 and 2305 of the Revised Statutes, and the prescribed proof of compliance therewith will be required to be produced before the issue of final certificate.

3. It is provided in the statute that section 2301 of the Revised Statutes shall not apply to these lands. See pages 19 and 88 of said circular. Therefore, entries made thereon will not be subject to commutation under that section.

Any person applying to enter or file for a homestead will be required first to make affidavit in addition to other requirements that he did not violate the law by entering upon and occupying any portion of the lands described in the President's proclamation dated March 23, 1889, prior to twelve o'clock, noon, April 22d, 18[illegible] affidavit to accompany your returns for the entry allowed.

The statute provides that townsite entries may be allowed under sections 2387 and 2388 U. S. R. S., but limits the area in any such entry to one half section or 320 acres, as the maximum, whatever the number of inhabitants. For instructions as to entries under said sections of the Revised Statutes, you are referred to the circular issued by this office July 9, 1886, subdivision III, pages 4 and 5. Should applications for townsite entries or filings be presented by parties in interest, in the absence of officers properly qualified to make entry, in trust for the inhabitants, under the provisions of said section 2387, you will note the applications on your records, forward a report thereof to this office with any papers presented, and await instructions before allowing any entry of the land.

No rights under the town site laws can be acquired to any of the lands described in the said proclamation prior to the time therein prescribed for the same to become open to entry and occupancy as aforesaid, viz: twelve o'clock, noon, of the 22d of April, 1889.

It appears that by the President's order of the 26th of December, 1885, a reservation was established for military purposes of the following subdivisions of land within the boundaries described in said proclamation of the 23d of March, 1889, and which reservation still continues, viz: southwest quarter of section fifteen, south half of section sixteen, south half of section seventeen, southeast quarter of section eighteen, east half of section nineteen, all of section twenty, all of section twenty-one, west half of section twenty-two, west half of section twenty-seven, all of section twenty-eight, all of section twenty-nine, the east half of section thirty, north east quarter of section thirty-one, north half of section thirty-two, north half of section thirty-three, and northwest quarter of section thirty-four, all in township twelve north, range four west of the Indian Meridian.

These tracts, in view of their reservation under the President's order of December 26, 1885, are not subject to settlement or entry under the act of March 2, 1889, aforesaid, and the laws of the United States applicable thereto. See sections 2258 and 2289 U. S. R. S., and you will permit no entry or filing for any portion thereof.

It is thought that the foregoing will be found sufficient for your guidance in any cases that may arise, but should unforseen difficulties present themselves, you will submit the same for special instructions.

Respectfully,

S. M. STOCKSLAGER, *Commissioner.*

Approved:

JOHN W. NOBLE, *Secretary.*

OPENING OF OKLAHOMA TO SETTLEMENT.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

WHEREAS, Pursuant to section eight, of the Act of Congress approved March 3d, 1885, entitled "An Act making apropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30th, 1886, and for other purposes," certain articles of cession and agreement were made and concluded at the city of Washington on the 19th day of January, in the year of our Lord, 1889, by and between the United States of America and the Muscogee (or Creek) Nation of Indians, whereby the said Muscogee (or Creek) Nation of Indians, for the consideration therein mentioned, ceded and granted to the United States, without reservation or condition, full and complete title to the entire western half of the domain of the said Muscogee (or Creek) Nation, in the Indian Territory, lying west of the division line surveyed and established under the treaty with said Nation, dated the 14th day of June, 1866, and also granted and released to the United States all and every claim, estate, right or interest of any and every description in and to any and all land and territory whatever, except so much of the former domain of said Muscogee (or Creek) Nation as lies east of said line of division surveyed and established as aforesaid and then used and occupied as the home of said Nation, and which articles of cession and agreement were duly accepted, ratified and confirmed by said Muscogee (or Creek) Nation of Indians by act of its council. approved on the 31st day of January, 1889, and by the United States by act of Congress approved March 1st, 1889, and

WHEREAS, By section twelve of the Act, entitled "An Act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June 30th, 1890, and for other purposes," approved March 2d, 1889, a sum of money was appropriated to pay in full the Seminole Nation of Indians for all the right, title, interest and claim which said Nation of Indians might have in and to certain lands ceded by article three of the treaty between the United States and said Nation of Indians, concluded June 14th, 1866, and proclaimed August 16th 1866, said appropriation to become operative upon the execution by the duly appointed delegates of said Nation, specially empowered to do so, of a release and conveyance to the United States of all right, title, interest and claim of said Nation of Indians, in and to said lands, in manner, and form, satisfactory to the President of the United States, and

WHEREAS, Said release and conveyance, bearing date the 16th day of March, 1889, has been duly and fully executed, approved and delivered; and

WHEREAS, Section thirteen of the Act last aforesaid, relating to said lands, provides as follows:

[See the section, anterior page 3.]

NOW, THEREFORE, I, Benjamin Harrison, President of the United States, by virtue of the power in me vested by said Act of Congress, approved March 2d, 1889, aforesaid, do hereby declare and make known, that so much of the lands, as aforesaid, acquired from or conveyed by the Muscogee (or Creek) Nation of Indians, and from or by the Seminole Nation of Indians, respectively, as is contained within the following described boundaries, viz: Beginning at a point where the degree of longitude ninety-eight west from Greenwich, as surveyed in the years 1858, and 1871, intersects the Canadian river; thence north along and with the said degree to a point where the same intersects the Cimarron river, thence up said river, along the right bank thereof, to a point where the same is intersected by the south line of what is known as the Cherokee lands lying west of the Arkansas river, or as the "Cherokee Outlet," said line being the north line of the lands ceded by the Muscogee (or Creek) Nation of Indians to the United States by the treaty of June 14th, 1866, thence east along said line to a point where the same intersects the west line of the lands set apart as a reservation for the Pawnee Indians, by Act of Congress approved April 10th, 1876, being the range-line between ranges four and five east of the Indian Meridian, thence south on said line to a point where the same intersects the middle of the main channel of the Cimarron river, thence up said river, along the middle of the main channel thereof, to a point where the same intersects the range line between range one east and range one west (being the Indian Meridian) which line forms the western boundary of the reservation set apart respectively for the Iowa and Kickapoo Indians, by Executive orders dated respectively, August 15th, 1883; thence south along said range line or meridian to a point where the same intersects the right bank of the North Fork of the Canadian river; thence up said river, along the right bank thereof, to a point where the same is intersected by the west line of the reservation occupied by the Citizen Band of Pottawatomies, and the Absentee Shawnee Indians, set apart under the provisions of the treaty of February 27th, 1867, between the United States, and the Pottawatomie tribe of Indians and referred to in the Act of Congress approved May 23, 1872; thence south along the said west line of the aforesaid reservation to a point where the same intersects the middle of the main channel of the Canadian river; thence up the said river, along the middle of the main channel thereof, to a point opposite to the place of beginning, and thence north to the place of beginning (saving and excepting one acre of land in square form in the northwest corner of section nine, in township sixteen north, range two west of the Indian Meridian in Indian Territory; [subsequently changed. See anterior page], and also one acre of land in the southeast corner of the northwest quarter of section fifteen, township sixteen north, range seven west, of the Indian Meridian in the Indian Territory; (which last described two acres are hereby reserved for government use and control,) will at and after the hour of twelve o'clock, noon, of the 22d day of April next, and not before, be open for settlement, under the terms of and subject to all the conditions, limitations, and restrictions contained in said Act of Congress, approved March 2d, 1889, and the laws of the United States applicable thereto.

And it is hereby expressly declared and made known that no other parts or portions of the lands embraced within the Indian Territory than those herein specifically described, and declared to be open to settlement at the time above named and fixed, are to be considered as open to settlement under this Proclamation or the act of March 2d, 1889, aforesaid; and

Warning is hereby again expressly given that no person entering upon and occupying said lands before said hour of twelve o'clock, noon, of the 22d day of April, A. D. 1889, hereinbefore fixed, will ever be permitted to enter any of said lands or acquire any rights thereto, and that the officers of the United States will be required to strictly enforce the provision of the Act of Congress to the above effect.

In witness whereof, I have hereunto set my hand, and caused the seal of the United States to be affixed.

Done at the City of Washington, this 23d day of March, in the year of our Lord one thousand eight hundred and eighty-nine, and of the independence of the United States the one hundred and thirteenth.

[SEAL.] BENJAMIN HARRISON.

By the President,

JAMES G. BLAINE, *Secretary of State.*

THE CHEROKEE STRIP.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

WHEREAS, That portion of the Indian Territory, commonly known as the Cherokee Strip, or outlet, has been for some years in the occupancy of an association, or associations, of white persons, under certain contracts said to have been made with the Cherokee Nation in the nature of a lease or leases, for grazing purposes; and

WHEREAS, An opinion has been given to me, by the Attorney General, concurring with the opinion given to my predecessor by the late Attorney General, that whatever the right or title of said Cherokee Nation of the United States to or in said lands may be, no right exists in said Cherokee Nation, under the statutes of the United States, to make such lease or grazing contracts, and that such contracts are wholly illegal and void; and

WHEREAS, The continued use of said lands thereunder, for grazing purposes, is prejudicial to the public interests;

NOW, THEREFORE, I, Benjamin Harrison, President of the United States, do hereby proclaim and give notice:

First—That no cattle or live stock shall hereafter be brought on said lands for herding or grazing thereon.

Second—That all cattle and other live stock, now on said outlet, must be removed therefrom, not later than on October 1, 1890, and so much sooner as said lands or any of them may be, or become, lawfully open to settlement by citizens of the United States, and that all persons connected with said cattle companies or associations, must, not later than the time above indicated, depart from said lands.

In witness whereof, I have hereunto set my hand and caused the seal of the United States to be affixed.

Done at the city of Washington this 17th day of February, in the year of our Lord one thousand eight hundred and ninety, and of the independence of the United States of America the one hundred and fourteenth.

BENJAMIN HARRISON,
[SEAL.] *President.*

CHEROKEE STRIP.

BY THE PRESIDENT OF THE UNITED STATES OF AMERICA.

A PROCLAMATION.

To Whom it May Concern:

The lands known as the Cherokee Strip are not open to settlement.

The bill pending in Congress and intended to provide a civil government for the country known as Oklahoma, does not provide for opening the Cherokee Strip or outlet to settlement, and has not, as yet, received the vote of the two houses of Congress, or the approval of the President.

The entrance of settlers upon these lands is unlawful, and all persons are hereby warned against entering thereon. When these lands shall become open to settlement, prompt public notice will be given of that fact, but in the meantime, it is my duty to exclude all persons therefrom and those who enter unlawfully will only involve themselves in unprofitable trouble, as they will be immediately removed. BENJAMIN HARRISON,

Executive Mansion, March 15, 1890.

ORGANIC ACT.

AN ACT

To organize the Territory of Oklahoma—to establish courts in the Indian Territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That all that portion of the United States now known as the Indian Territory (except so much of the same as is actually occupied by the five civilized tribes, and the Indian tribes within the Quapaw Indian Agency, and except the unoccupied part of the Cherokee outlet,) together with that portion of the United States known as the Public Land Strip, is hereby erected into a temporary government by the name of the Territory of Oklahoma. The portion of the Indian Territory included in said Territory of Oklahoma is bounded by a line drawn as follows: Commencing at a point where the ninety-eighth meridian crosses the Red river, thence by said meridian to the point where it crosses the Canadian river, thence along said river to the west line of the Seminole country, thence along said line to the north fork of the Canadian river, thence down said river to the west line of the Creek country, thence along said line to the northwest corner of the Creek country, thence along the north line of the Creek country to the ninety-sixth meridian, thence northward by said meridian to the southern boundary line of Kansas, thence west along said line to the Arkansas river, thence down said river to the north line of the land occupied by the Ponea tribe of Indians, from which point the line runs so as to include all the lands occupied by the Ponka, Tonkawa, Otoe and Missouria, and Pawnee tribes of Indians until it strikes the south line of the Cherokee outlet which it follows westward to the (east) line of the State of Texas, thence by the boundary line of the State of Texas to the point of beginning; the Public Land Strip which is included in said Territory of Oklahoma is bounded east by the one-hundredth meridian, south by Texas, west by New Mexico, north by Colorado and Kansas. Whenever the interest of the Cherokee Indians in the land known as the Cherokee outlet shall have been extinguished and the President shall make proclamation thereof, said outlet shall thereupon and without further legislation become a part of the Territory of Oklahoma. Any other lands within the Indian Territory not embraced within these boundaries shall hereafter become a part of the Territory of Oklahoma whenever the Indian Nation or tribe owning such lands shall signify to the President of the United States in legal manner its assent that such lands shall so become a part of said Territory of Oklahoma, and the President shall thereupon make proclamation to that effect.

Congress may at any time hereafter change the boundaries of said Territory, or attach any portion of the same to any other State or Territory of the United States, without the consent of the inhabitants of the Territory hereby created: *Provided*, That nothing in this act shall be construed to impair any right now pertaining to any Indians or Indian tribe in said Territory under the laws, agreements, and treaties of the United States, or to impair the rights of person or property pertaining to said Indians, or to affect the authority of the government of the United States to make any regulation or to make any law respecting said Indians, their lands, property ~~or other~~ rights which it would have been competent to make or enact if this act had not been passed.

SEC. 2. That the executive power of the Territory of Oklahoma shall be vested in a Governor, who shall hold his office for four years, and until his successor shall be appointed and qualified, unless sooner removed by the President of the United States. The Governor shall reside within said Territory; shall be Commander-in-Chief of the militia thereof; he may grant pardons for offenses against the laws of said Territory, and reprieves for offenses against the laws of the United States, until the decision of the President can be made known thereon; he shall commission all officers who shall be appointed to office under the laws of said Territory, and shall take care that the laws be faithfully executed.

SEC. 3. That there shall be a Secretary of said Territory, who shall reside therein and hold his office for four years, unless sooner removed by the President of the United States; he shall record and preserve all the laws and the proceedings of the legislative assembly hereinafter constituted, and all acts and proceedings of the Governor in his executive department; he shall transmit one copy of the laws and journals of the legislative assembly, within thirty days after the end of each session thereof, to the President of the United States and to the Secretary of the Interior, and, at the same time, two copies of the laws and journals of the legislative assembly to the Speaker of the House of Representatives and the President of the Senate for the use of Congress; and in case of the death, removal, resignation, or other necessary absence of the Governor from the Territory, the Secretary shall execute all the powers and perform all the duties of the Governor during such vacancy or absence, or until another Governor is appointed and qualified.

SEC. 4. That the legislative power and authority of said Territory shall be vested in the Governor and legislative assembly. The legislative assembly shall consist of a Council and a House of Representatives. The Council shall consist of thirteen members, having the qualifications of voters as hereinafter prescribed, whose term of service shall continue two years. The House of Representatives shall consist of twenty-six members, possessing the same qualifications as prescribed for members of the Council, and whose term of service shall continue two years; and the sessions of the legislative assembly shall be biennial and shall be limited to sixty days' duration: *Provided, however,* That the duration of the first session of said legislative assembly may continue one hundred and twenty days.

That for the purpose of facilitating the organization of a temporary government in the Territory of Oklahoma, six counties are hereby established therein, to be known, until after the first election in the Territory, as the First County, the Second County, the Third County, the Fourth County, the Fifth County, and the Sixth County, the boundaries of which shall be fixed by the Governor of the Territory until otherwise provided by the legislative assembly thereof. The county seat of the First County shall be at Guthrie. The county seat of the Second County shall be at Oklahoma City. The county seat of the Third County shall be at Norman. The county seat of the Fourth county shall be at El Reno. The county seat of the Fifth County shall be at Kingfisher City. The Sixth County shall embrace all that portion of the

Territory lying west of the one-hundredth meridian, known as the Public Land Strip, the county seat of which shall be at Beaver: *Provided*, That the county seats located by this act may be changed in such manner as the Territorial legislature may provide.

At the first election for members of the legislative assembly the people of each county may vote for a name for such county, and the name which receives the greatest number of votes shall be the name of such county. If two or more counties should select the same name, the county which casts the greatest number of votes for such name shall be entitled to the same, and the names receiving the next highest number of votes in the other counties shall be the names of such counties. An apportionment shall be made by the Governor, as nearly equal as practicable, among the several counties or districts for the election of the Council and House of Representatives, giving to each section of the Territory, representation in the ratio of its population (excepting Indians not taxed) as nearly as may be; and the members of the Council and House of Representatives shall reside in and be inhabitants of the districts for which they may be elected, respectively. Previous to the first election the Governor shall cause a census or enumeration of the inhabitants of the several counties or districts of the Territory to be taken, unless the same shall have been taken and published by the United States, in which case such census and enumeration shall be adopted, and the first election shall be held at such times and places, and be conducted in such manner, both as to the persons who superintend such election and the returns thereof, as the Governor shall appoint and direct, and he shall at the same time declare the number of the members of the Council and the House of Representatives to which each of the counties or districts shall be entitled, as shown by the census herein provided for. The number of persons authorized to be elected, having the highest number of legal votes in each of said council districts for members of the Council, shall be declared by the Governor to be duly elected to the Council, and the person or persons authorized to be elected, having the greatest number of votes for the House of Representatives, equal to the number to which each county or district shall be entitled, shall be declared by the Governor to be elected members of the House of Representatives: *Provided*, That in case two or more persons voted for have an equal number of votes, and in case a vacancy otherwise occurs in either branch of the legislative assembly, the Governor shall order a new election; and the persons thus elected to the legislative assembly shall meet, at such place and on such day as the Governor shall appoint, but after such first election, however, the time place, and manner of holding elections by the people, and the apportionment of representation, and the day of the commencement of the regular sessions of the legislative assembly, shall be prescribed by law: *Provided, however*, That the Governor shall have power to call the legislative assembly together by proclamation, on an extraordinary occasion, at any time.

SEC. 5. That all male citizens of the United States above the age of twenty-one years, and all male persons of foreign birth over said age, who shall have, twelve months prior thereto, declared their intention to become citizens of the United States, as now required by law, who are actual residents at the time of the passage of this act of that portion of said Territory which was declared by the proclamation of the President to be open for settlement on the twenty-second day of April, eighteen hundred and eighty-nine, and of that portion of said Territory heretofore known as the Public Land Strip, shall be entitled to vote at the first election in the Territory. At every subsequent election the qualifications of voters, and of holding office, shall be such as may be prescribed by the legislative assembly, subject, however, to the following restrictions on the power of the legislative assembly, namely: *First.* The right of suffrage and of holding office shall be exercised only by citizens of the United States above the age of twenty-one years and by persons of foreign birth above that age who have declared, on oath, before a competent court of record, as required by the naturalization laws of the United States, their intention to become citizens, and have taken an oath to support the Constitution of the United States, and who shall have been residents of the United States for the term of twelve months before the election at which they offer to vote. *Second.* There shall be no denial of the elective franchise or of holding office, to a citizen, on account of race, color, or previous condition of servitude. *Third.* No officer, soldier, seaman, marine, or other person in the army or navy, or attached to troops in the service of the United States, shall be allowed to vote in said Territory by reason of being on service therein. *Fourth.* No person belonging to the army or navy shall be elected to, or hold, any civil office or appointment in said Territory.

SEC. 6. That the legislative power of the Territory shall extend to all rightful subjects of legislation, not inconsistent with the Constitution and Laws of the United States, but no law shall be passed interfering with the primary disposal of the soil; no tax shall be imposed upon the property of the United States, nor shall the lands or other property of non-residents be taxed higher than the lands or other property of residents, nor shall any law be passed impairing the right to private property, nor shall any unequal discrimination be made in taxing different kinds of property, but all property subject to the taxation shall be taxed in proportion to its value: *Provided,* That nothing herein shall be held to prohibit the levying and collecting license or special taxes in the Territory, from persons engaged in any business therein, if the legislative power shall consider such taxes necessary. Every bill which shall have passed the Council and the House of Representatives of said Territory shall, before it becomes a law, be presented to the Governor of the Territory. If he approve he shall sign it, but if not, he shall return it with his objections to the House in which it originated, who shall enter the objections at large upon their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that House shall agree to pass the bill, it shall be sent, together with the objections, to the other House, by which it shall likewise be reconsidered, and if approved by two-thirds of that House it shall become a law. But in all such cases the vote of both Houses shall be determined by yeas and nays, to be entered on the journal of each House respectively. If any bill shall not be returned by the Governor within five days (Sunday excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the assembly, by adjournment, prevent its return, in which case it shall not be a law.

SEC. 7. That all township, district, and county officers, not herein otherwise provided for, shall be appointed or elected, as the case may be, in such manner as shall be provided by the Governor and legislative assembly of the Territory. The Governor shall nominate and, by and with the advice and consent of the Council, appoint all officers not herein otherwise provided for, and in the first instance the Governor alone may appoint all such officers, who shall hold their offices until the end of the first session of the legislative assembly; and he shall lay off the necessary districts for members of the Council and House of Representatives, and all other officers; and whenever a vacancy happens from resignation or death, during the recess of the legislative Council, in any office which is filled by appointment of the Governor, by and with the advice and consent of the Council, the Governor shall fill such vacancy by granting a commission, which shall expire at the end of the next session of the legislative Council. It is further provided that the legislative assembly shall not authorize the issuing of any bond, scrip, or evidence of debt by the Territory, or any county, city, town, or township therein, for the construction of any railroad.

SEC. 8. That no member of the legislative assembly shall hold or be appointed to any office, which has been created or the salary or emoluments of which have been increased while he was a member, during the term for which he was elected and for one year after the expiration of such term, but this restriction shall not be applicable to member of the first legislative assembly provided for by this act; and no person holding a commission or appointment under the United States, except postmasters, shall be a member of the legislative assembly, or shall hold any office under the government of said Territory.

SEC. 9. That the judicial power of said Territory shall be vested in a Supreme Court, District Courts, Probate Courts, and Justices of the Peace. The Supreme Court shall consist of a chief-justice and two associate justices, any two of whom shall constitute a quorum. They shall hold their offices for four years, and until their successors are appointed and qualified, and they shall hold a term annually at the seat of government of said Territory. The jurisdiction of the several courts herein provided for, both appellate and original, and that of the Probate Courts and of the Justices of the Peace, shall be as limited by law: *Provided*, That Justices of the Peace, who shall be elected in such manner as the legislative assemby may provide by law, shall not have jurisdiction of any matter in controversy when the title of boundaries of land may be in dispute, or where the debt or sum claimed shall exceed one hundred dollars; and said Supreme and District Courts, respectively, shall possess chancery as well as common law jurisdiction, and authority for redress of all wrongs committed against the constitution or laws of the United States or of the Territory affecting persons or property. Said Territory shall be divided into three judicial districts, and a District Court shall be held in each county in said district thereof by one of the Justices of the Supreme Court, at such time and place as may be prescribed by law, and each judge after assignment shall reside in the district to which he is assigned. The Supreme Court shall define said judicial districts, and shall fix the times and places at each county seat in each district, where the District Court shall be held and designate the judge who shall preside therein. And the territory not embraced in organized counties shall be attached for judicial purposes to such organized county or counties as the Supreme Court may determine. The Supreme Court of said Territory shall appoint its own clerk, who shall hold his office at the pleasure of the court for which he is appointed. Each District Court shall appoint its clerk, who shall also be the register in chancery, and shall keep his office where the court may be held. Writs of error, bills of exception, and appeals shall be allowed in all cases from final decisions of said District Courts, to the Supreme Court under such regulations as may be prescribed by law, but in no case removed to the Supreme Court shall trial by jury be allowed in said court. Writs of error and appeals from the final decisions of said Supreme Court shall be allowed and may be taken to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Courts of the United States, where the value of the property or the amount in controversy, to be ascertained by oath or affirmation of either party or other competent witnesses, shall exceed five thousand dollars; and each of the said District Courts shall have and exercise, exclusive of any court heretofore established, the same jurisdiction in all cases arising under the constitution and laws of the United States as is vested in the Circuit and District Courts of the United States. In addition to the jurisdiction otherwise conferred by this act, said District Courts shall have and exercise exclusive original jurisdiction over all offenses against the laws of the United States committed within that portion of the Cherokee Outlet not embraced within the boundaries of said Territory of Oklahoma as herein defined, and in all civil cases between citizens of the United States residing in such portion of the Cherokee Outlet, or between citizens of the United States, or of any State or Territory, and any citizen of or person or persons residing or found therein, when the value of the thing in controversy or damages or money claimed shall exceed one hundred dollars; writs of error, bills of exceptions, and appeals shall in all such cases; civil and criminal, be allowed from the District Courts to the Supreme Court in like manner, and be proceeded with in like manner as in cases arising within the limits of said Territory. For all judicial purposes as herein defined such portion of the Cherokee Outlet not embraced within the boundaries of the Territory of Oklahoma shall be attached to, and be a part of, one of the judicial districts of said Territory, as may be designated by the Supreme Court. All acts and parts of acts heretofore enacted, conferring jurisdiction upon United States courts held beyond and outside the limits of the Territory of Oklahoma as herein defined, as to all causes of action or offenses in said Territory, and in that portion of the Cherokee Outlet hereinbefore referred to, are hereby repealed, and such jurisdiction is hereby given to the Supreme and District Courts in said Territory; but all actions commenced in such courts, and crimes committed in said Territory and in the Cherokee Outlet, prior to the passage of this act, shall be tried and prosecuted, and proceeded with until finally disposed of, in the courts now having jurisdiction thereof, as if this act had not been passed. The said Supreme and District Courts of said Territory, and the respective judges thereof, shall and may grant writs of mandamus and habeas corpus in all cases authorized by law; and the first six days of every term of said courts, or so much thereof as shall be necessary, shall be appropriated to the trial of causes arising under said constitution and laws; and writs of error and appeals in all such cases shall be made to the Supreme Court of said Territory, as in other cases.

SEC. 10. Persons charged with any offense or crime in the Territory of Oklahoma, and for whose arrest a warrant has been issued, may be arrested by the United States Marshal or any of his deputies, wherever found in said Territory, but in all cases the accused shall be taken, for preliminary examination, before a United States Commissioner, or a Justice of the Peace of the county, whose office is the nearest to the place where the offense or crime was committed.

All offenses committed in said Territory, if committed within any organized county, shall be prosecuted and tried within said county, and if committed within territory not embraced in any organized county, shall be prosecuted and tried in the county to which such territory shall be attached for judicial purposes. And all civil actions shall be instituted in the county in which the defendent, or either of them, resides or may be found; and when such actions arise within any portion of said Territory, not organized as a county, such actions shall be instituted in the county to which such Territory is attached for judicial purposes, but any case, civil or criminal, may be removed, by change of venue, to another county.

SEC. 11. That the following chapters and provisions of the compiled laws of the State of Nebraska, in force November first, eighteen hundred and eighty-nine, in so far as they are locally applicable, and not in conflict with the laws of the United States or with this act, are hereby extended to and put into force in the Territory of Oklahoma, until after the adjournment of the first session of the legislative assembly of said Territory, namely: the provisions of articles two, three, and four, of chapter two, entitled "Agriculture," of chapter four, entitled "Animals;" of chapter six, entitled "Assignments;" of chapter seven, entitled "Attorneys;" of chapter ten, entitled "Bonds and oaths —official;" of chapter twelve, entitled "Chattle mortgages;" of chapter fourteen, entitled "Cities of the second class and villages;" of chapter fifteen, entitled "Common law;" of chapter sixteen, entitled "Corporations;" of chapter eighteen, entitled "Counties and county officers;" of sections fifteen and sixteen of article six of the constitution of said State, and of chapter twenty of said laws, entitled "Courts—probate;" of chapter twenty-three, entitled "Decedents;" of chapter twenty-four, entitled "Deputies;" of chapter twenty-five, entitled "Divorce and alimony;" of chapter twenty-six, entitled "Elections;" of chapter twenty-eight, entitled "Fees;" of chapter thirty-two, entitled "Frauds;" of chapter thirty-four, entitled "Guardians and wards;" of chapter thirty-six, entitled "Homesteads;" of chapter forty-one, entitled "Instruments negotiable;" of chapter forty-four, entitled "Interest;" of chapter forty-six, entitled "Jails;" of chapter fifty, entitled "Liquors:" but no licenses shall be issued under this chapter; of chapter fifty-two, entitled "Marriage;" of chapter fifty-three, entitled "Married women;" of chapter fifty-four, entitled "Mechanics' and laborers' liens;" of chapter sixty-one, entitled "Notaries public;" of chapter sixty-two, entitled "Oath and affirmations;" of chapter sixty-three, entitled "Occupying claimants;" of article one of chapter seventy-two, entitled "Rail Roads;" of chapter seventy-three, entitled "Real estate;" and the provisions of part two of said laws, entitled "Code of civil procedure," and of part three thereof, entitled "Criminal code."

The governor of said Territory is authorized to divide each county into election precincts and into such political sub-divisions other than school districts as may be required by the laws of the State of Nebraska; and is hereby authorized to appoint all officers of such counties and sub-divisions thereof as he shall deem necessary, and all election officers until their election or appointment shall be provided for by the legislative assembly, but not more than two of the judges or inspectors of election in any election precinct shall be members of the same political party, and the candidates of each political party who may be voted for at such election may designate one person who shall be present at the counting and canvassing of the votes cast in each precinct.

The Supreme and District Courts of said Territory shall have the same power to enforce the laws of the State of Nebraska hereby extended to and put in force in said Territory as courts of like jurisdiction have in said State; but county courts and Justices of the Peace shall have and exercise the jurisdiction which is authorized by said laws of Nebraska: *Provided*, That the jurisdiction of Justices of the Peace in said Territory shall not exceed the sum of one hundred dollars, and County Courts shall have jurisdiction in all cases where the sum or matter in demand exceeds the sum of one hundred dollars.

SEC. 12. That jurisdiction is hereby conferred upon the district courts of the Territory of Oklahoma over all controversies arising between members or citizens of other tribes or nations in the Territory of Oklahoma, and any citizen or member of one tribe or nation who may commit any offense or crime in said Territory against the person or property of a citizen or member of another tribe or nation shall be subject to the same punishment in the Territory of Oklahoma as he would be if both parties were citizens of the United States; and any person residing in the Territory of Oklahoma, in whom there is Indian blood, shall have the right to invoke the aid of courts therein for the protection of his person or property, as though he were a citizen of the United States: *Provided*, That nothing in this act contained shall be so construed as to give jurisdiction to the courts established in said Territory in controversies arising between Indians of the same tribe, while sustaining their tribal relation.

SEC. 13. That there shall be appointed for said Territory a person learned in the law, who shall act as attorney for the United States, and shall continue in office for four years, and until his successor is appointed and qualified, unless sooner removed by the President. Said attorney shall receive a salary at the rate of two hundred and fifty dollars annually. There shall be appointed a Marshal for said Territory, who shall hold his office for four years, and until his successor is appointed and qualified, unless sooner removed by the President, and who shall execute all process issuing from the said courts when exercising their jurisdiction as Circuit and District Courts of the United States; he shall have the power and perform the duties and be subject to the same regulations and penalties imposed by law on the Marshal of the United States, and be entitled to a salary at the rate of two hundred dollars a year. There shall be allowed to the Attorney, Marshal, Clerks of the Supreme and District Courts the same fees as are prescribed for similar services by such persons in chapter sixteen, title Judiciary, of the Revised Statutes of the United States.

SEC. 14. That the Governor, Secretary, Chief Justice, and Associate Justices, Attorney, and Marshal shall be nominated and, by and with the advice and consent of the Senate, appointed by the President of the United States. The Governor and Secretary to be appointed as aforesaid shall, before they act as such, respectively take an oath of affirmation before the District Judge, or some Justice of the Peace, or other officer in the limits of said Territory duly authorized to administer oaths and affirmations by the laws now in force therein, or before the Chief Justice or some Associate Justice of the Supreme Court of the United States, to support the Constitution of the United States and faithfully to discharge the duties of their respective offices, which said oaths, when so taken, shall be certified by the person by whom the same shall have been taken; and such certificates shall be received and recorded by the Secretary, among the executive proceedings, and the Chief Justice and Associate Justices, and all other civil officers in said Territory, before they act as such, shall take a like oath or affirmation before the said Governor or Secretary, or some Judge or Justice of the Peace of the Territory, who may be duly commissioned and qualified, which said oath or affirmation shall be certified and transmitted by the person taking the same, to the Secretary, to be recorded by him as aforesaid, and afterwards the like oath or affirmation shall be taken, certified, and recorded in such manner and form as may be prescribed by law. The Governor shall receive an annual salary of two thousand six hundred dollars as Governor; the Chief Justice and Associate Justices shall receive an annual salary of three thousand dollars, and the Secretary shall receive an annual salary of one thousand eight hundred dollars. The said salaries shall be payable quarter-yearly at the Treasury of the United States. The members of the legislative assembly shall be entitled to receive four dollars each per day during their attendance at the sessions, and four dollars for each and every twenty miles traveled in going to and returning from said sessions, estimating the distance by the nearest traveled route. There shall be appropriated annually the sum of one thousand dollars, to be expended by the Governor to defray the contingent expenses of the Territory. There shall also be appropriated annually a sufficient sum, to be expended by the Secretary, and upon an estimate to be made by the Secretary of the Treasury of the United States, to defray the expenses of the legislative assembly, of the courts, the printing of the laws, and other incidental expenses; and the Secretary of the Territory shall annually account to the Secretary of the Treasury of the United States for the manner in which the aforesaid sum shall have been expended.

SEC. 15. That the legislative assembly of the Territory of Oklahoma shall hold its first session at Guthrie, in said Territory, at such time as the Governor thereof shall appoint and direct; and at said first session, or as soon thereafter as they shall deem expedient, the Governor and legislative assembly shall proceed to locate and establish the seat of government for said Territory, at such place as they may deem eligible, which place, however, shall thereafter be subject to be changed by the said Governor and legislative assembly.

SEC. 16. That a delegate to the House of Representatives of the United States, to serve during each Congress of the United States, may be elected by the voters qualified to elect members of the legislative assembly, who shall be entitled to the same rights and privileges as are exercised and enjoyed by the delegates from the several other Territories of the United States in the said House of Representatives. The first election shall be held at such time and place, and be conducted in such manner as the Governor shall appoint and direct, after at least sixty days' notice, to be given by proclamation, and at all subsequent elections the time, place, and manner of holding elections, shall be prescribed by law. The person having the greatest number of votes of the qualified electors, as hereinbefore provided, shall be declared by the Governor elected, and a certificate thereof shall be accordingly given.

SEC. 17. That the provisions of title sixty-two of the Revised Statutes of the United States relating to national banks, and all amendments thereto, shall have the same force and effect in the Territory of Oklahoma as elsewhere in the United States: *Provided*, That persons otherwise qualified to act as directors shall not be required to have resided in said Territory for more than three months immediately preceding their election as such.

SEC. 18. That sections numbered sixteen and thirty-six in each township in said Territory shall be, and the same are hereby reserved for the purpose of being applied to public schools in the State or States hereafter to be erected out of the same. In all cases where sections sixteen and thirty-six, or either of them, are occupied by actual settlers prior to survey thereof the County Commissioners of the counties in which such sections are so occupied are authorized to locate other lands, to an equal amount, in sections or fractional sections, as the case may be, within their respective counties, in lieu of the sections so occupied.

All the lands embraced in that portion of the Territory of Oklahoma heretofore known as the Public Land Strip, shall be open to settlement under the provisions of the homestead laws of the United States, except section twenty-three hundred and one of the Revised Statutes, which shall not apply; but all actual and bona fide settlers upon and occupants of the lands in said Public Land Strip at the time of the passage of this act, shall be entitled to have preference to and hold the lands upon which they have settled under the homestead laws of the United States, by virtue of their settlement and occupancy of said lands, and they shall be credited with the time they have actually occupied their homesteads, respectively, not exceeding two years, on the time required under said laws, to perfect title as homestead settlers.

The lands within said Territory of Oklahoma, acquired by cession of the Muscogee (or Creek) Nation of Indians, confirmed by Act of Congress approved March first, eighteen hundred and eighty-nine, and also the lands acquired in pursuance of an agreement with the Seminole Nation of Indians by re-lease and conveyance, dated March sixteenth, eighteen hundred and eighty-nine, which may hereafter be opened to settlement, shall be disposed of under the provisions of sections twelve, thirteen and fourteen of the "Act making appropriations for the current and contingent expenses of the Indian Department, and for fulfilling treaty stipulations with various Indian tribes, for the year ending June thirtieth, eighteen hundred and ninety, and for other purposes," approved March second, eighteen hundred and eighty-nine, and under section two of an "Act to ratify and confirm an agreement with the Muscogee (or Creek) Nation of Indians in the Indian Territory, and for other purposes," approved March first, eighteen hundred and eighty-nine: *Provided, however*, That each settler under and in accordance with the provisions of said acts shall, before receiving a patent for his homestead, pay to the United States for the land so taken by him, in addition to the fees provided by law, the sum of one dollar and twenty-five cents per acre.

Whenever any of the other lands within the Territory of Oklahoma, now occupied by any Indian tribe, shall by operation of law or proclamation of the President of the United States, be open to settlement, they shall be disposed of to actual settlers only, under the provisions of the homestead law, except section twenty-three hundred and one of the Revised Statutes of the United States, which shall not apply: *Provided, however*, That each settler, under and in accordance with the provisions of said homestead laws, shall before receiving a patent for his homestead pay to the United States for the land so taken by him, in addition to the fees provided by law, a sum per acre equal to the amount which has been or may be paid by the United States to obtain a relinquishment of the Indian title or interest therein, but in no case shall such payment be less than one dollar and twenty-five cents per acre. The rights of honorably discharged soldiers and sailors in the late civil war, as defined and described in sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States, shall not be abridged except as to such payment. All tracts of land in Oklahoma Territory which have been set apart for school purposes, to educational societies, or missionary boards at work among the Indians, shall not be open for settle ment, but are hereby granted to the respective educational societies or missionary boards for whose use the same has been set apart. No part of the land embraced within the Territory hereby created shall inure to the use or benefit of any railroad corporation, except the rights of way and land for stations heretofore granted to certain railroad corporations. Nor shall any provision of this act or any act of any officer of the United States, done or performed under the provisions of this act or otherwise, invest any corporation owning or operating any railroad in the Indian Territory, or Territory created by this act, with any land or right to any land in either of said Territories, and this act shall not apply to or effect any land which, upon any condition on becoming a part of the public domain, would inure to the benefit of, or become the property of, any railroad corporation.

SEC. 19. That portion of the Territory of Oklahoma heretofore known as the Public Land Strip is hereby declared a public land district, and the President of the United States is hereby empowered to locate a land office in said district, at such place as he shall select, and to appoint in conformity with existing law a Register and Receiver of said land office. He may also, whenever he shall deem it necessary, establish another additional land district within said Territory, locate a land office therein, and in like manner appoint a Register and Receiver thereof. And the Commissioner of the general land office shall, when directed by the President, cause the lands within the Territory to be properly surveyed and subdivided where the same has not already been done.

SEC. 20. That the procedure in applications, entries, contests, and adjudications in the Territory of Oklahoma shall be in form and manner prescribed under the homestead laws of the United States, and the general principals and provisions of the homestead laws, except as modified by the provisions of this act and the acts of Congress approved March first and second, eighteen hundred and eighty-nine, heretofore mentioned, shall be applicable to all entries made in said Territory, but no patent shall be issued to any person who is not a citizen of the United States at the time of making final proof.

All persons who shall settle on land in said Territory, under the provisions of the homestead laws of the United States, and of this act, shall be required to select the same in square form as nearly as may be; and no person who shall at the time be seized in fee simple of a hundred and sixty acres of land in any State or Territory, shall hereafter be entitled to enter land in said Territory of Oklahoma. The provisions of sections twenty-three hundred and four and twenty-three hundred and five of the Revised Statutes of the United States shall, except so far as modified by this act, apply to all homestead settlements in said Territory.

SEC. 21. That any person, entitled by law to take a homestead in said Territory of Oklahoma, who has already located and filed upon, or shall hereafter locate and file upon, a homestead within the limits described in the President's proclamation of April first, [March 23] eighteen hundred and eighty-nine, and under and in pursuance of the laws applicable to the settlement of the lands opened for settlement by such proclamation, and who has complied with all the laws relating to such homestead settlement, may receive a patent therefor at the expiration of twelve months from date of locating upon said homestead, upon payment to the United States of one dollar and twenty-five cents per acre for land embraced in such homestead.

SEC. 22. That the provisions of title thirty-two, chapter eight, of the Revised Statutes of the United States, relating to "reservation and sale of town sites on the public lands," shall apply to the lands open, or to be opened to settlement in the Territory of Oklahoma, except those opened to settlement by the proclamation of the President on the 22nd day of April, [March 23] eighteen hundred and eighty-nine: *Provided*, That hereafter all surveys for town sites in said Territory shall contain reservations for parks (of substantially equal area, if more than one park) and for schools and other public purposes, embracing in the aggregate not less than ten nor more than twenty acres; and patents for such reservations, to be maintained for such purposes, shall be issued to the towns respectively when organized as municipalities. *Provided, further*, That in case any lands in said Territory of Oklahoma, which may be occupied and filed upon as a homestead, under the provisions of law applicable to said Territory, by a person who is entitled to perfect his title thereto under such laws, are required for town site purposes, it shall be lawful for such person to apply to the Secretary of the Interior to purchase the lands embraced in said homestead, or any part thereof, for town site purposes. He shall file with the application a plat of such proposed town site, and if such plat shall be approved by the Secretary of the Interior, he shall issue a patent to such person for land embraced in said town site, upon the payment of the sum of ten dollars per acre for all the lands embraced in such town site, except the lands to be donated and maintained for public purposes, as provided in this section. And the sums so received by the Secretary of the Interior shall be paid over to the proper authorities of the municipalities when organized, to be used by them for school purposes only.

SEC. 23. That there shall be reserved public highways four rods wide between each section of land in said Territory, the section lines being the center of said highways; but no deduction shall be made, where cash payments are provided for, in the amount to be paid for each quarter section of land by reason of such reservation. But if the said highway shall be vacated by any competent authority, the title to the respective strips shall inure to the then owner of the tract of which it formed a part by the original survey.

SEC. 24. That it shall be unlawful for any person, for himself or any company, association, or corporation, to directly or indirectly procure any person to settle upon any lands open to settlement in the Territory of Oklahoma, with intent thereafter of acquiring title thereto; and any title thus acquired shall be void; and the parties to such fraudulent settlement shall severally be guilty of a misdemeanor, and shall be punished upon indictment, by imprisonment not exceeding twelve months, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment, in the discretion of the court.

SEC. 25. That inasmuch as there is a controversy between the United States and the State of Texas, as to the ownership of what is known as Greer county, it is hereby expressly provided that this act shall not be construed to apply to said Greer county until the title to the same has been adjudicated and determined to be in the United States; and, in order to provide for a speedy and final judicial determination of the controversy aforesaid, the Attorney General of the United States is hereby authorized and directed to commence in the name and on behalf of the United States, and prosecute to a final determination, a proper suit in equity in the Supreme Court of the United States against the State of Texas, setting forth the title and claim of the United States to the tract of land lying between the North and South Forks of the Red river where the Indian Territory and the State of Texas adjoin, east of the one hundredth degree of longitude, and claimed by the State of Texas as within its boundary and a part of its land, and designated on its map as Greer county, in order that the rightful title to said land may be finally determined, and the court on the trial of the case may, in its discretion, so far as the ends of justice will warrant, consider any evidence heretofore taken and received by the Joint Boundary Commission under the act of Congress approved January thirty-first, eighteen hundred and eighty-five; and said case shall be advanced on the docket of said court, and proceeded with to its conclusion as rapidly as the nature and circumstances of the case permit.

SEC. 26. That the following sums, or so much thereof as may be necessary, are hereby appropriated, out of any money in the treasury not otherwise appropriated, to be disbursed under the direction of the Secretary of the Interior, in the same manner that similar appropriations are disbursed in the other Territories of the United States, namely:

To pay the expenses of the first legislative assembly of said Territory, including the printing of the session laws thereof, the sum of forty thousand dollars.

To pay the salaries of the Governor, the judges of the Supreme Court, the secretary of the Territory, the marshal, the attorney, and other officers whose appointment is proved for in this act, for the remainder of the fiscal year ending June thirtieth, eighteen hundred and ninety, the sum of twenty thousand dollars.

To pay for the rent of buildings for the legislative and executive offices, and for the Supreme and District Courts; to provide jails, and support prisoners; to pay mileage and per diem of jurors and witness; to provide books, records, and stationery for the executive and judicial offices for the remainder of the fiscal year ending June thirthieth, eighteen hundred and ninety, the sum of fifteen thousand dollars.

To enable the Governor to take a census of the inhabitants of said Territory, as required by law, the sum of five thousand dollars.

To be expended by the Governor in temporary support and aid of common school education in said Territory, as soon as a system of public schools shall have been established by the legislative assembly, the sum of fifty thousand dollars.

SEC. 27. That the provisions of this act shall not be so construed as to invalidate or impair any legal claims or rights of persons occupying any portion of said Territory, under the laws of the United States, but such claims shall be adjudicated by the Land Department, or the courts, in accordance with their respective jurisdictions.

SEC. 28. That the constitution and all the laws of the United States not locally inapplicable shall, except so far as modified by this act, have the same force and effect as elsewhere within the United States; and all acts and parts of acts in conflict with the provisions of this act are as to their effect in said Territory of Oklahoma hereby repealed: *Provided*, That section eighteen hundred and fifty of the Revised Statutes of the United States shall not apply to the Territory of Oklahoma.

SEC. 29. That all that part of the United States which is bounded on the north by the State of Kansas, on the east by the States of Arkansas and Missouri, on the south by the State of Texas, and on the west and north by the Territory of Oklahoma as defined in the first section of this act, shall, for the purposes of this act, be known as the Indian Territory; and the jurisdiction of the United States court established under and by virtue of an act entitled "An act to establish a United States court in the Indian Territory, and for other purposes," approved March first, eighteen hundred and eighty-nine, is hereby limited to and shall extend only over the Indian Territory as defined in this section; that the court established by said act shall, in addition to the jurisdiction conferred thereon by said act, have and exercise within the limits of the Indian Territory jurisdiction in all civil cases in the Indian Territory, except cases over which the tribal courts have exclusive jurisdiction; and in all cases on contracts entered into by citizens of any tribe or nation with citizens of the United States in good faith and for valuable consideration, and in accordance with the laws of such tribe or nation, and such contracts shall be deemed valid and enforced by such courts; and in all cases over which jurisdiction is conferred by this act or may hereafter be conferred by act of Congress; and the provisions of this act hereinafter set forth shall apply to said Indian Territory only.

SEC. 30. That for the purpose of holding terms of said court, said Indian Territory is hereby divided into three divisions, to be known as the first, second, and third division. The first division shall consist of the country occupied by the Indian tribes in the Quapaw Indian Agency and all that part of the Cherokee country east of the ninety-sixth meridian and all of the Creek country; and the place for holding said court therein shall be at Muskogee. The second division shall consist of the Choctaw country, and the place for holding said court therein shall be at South McAlister. The third division shall consist of the Chickasaw and Seminole countries, and the place for holding said court therein shall be at Ardmore. That the Attorney General of the United States may, if in his judgment it shall be necessary, appoint an assistant attorney for said court. And the clerk of said court shall appoint a deputy clerk in each of said divisions in which said clerk does not himself reside at the place in such division where the terms of said court are to be held. Such deputy clerk shall keep his office and reside at the place appointed for holding said courts in the division of such residence, and shall keep the records of said courts for such division, and in the absence of the clerk may exercise all the official powers of the clerk within the division for which he is appointed: *Provided*, That the appointment of such deputies shall be approved by the said United States court in the Indian Territory, and may be annulled by said court at its pleasure, and the clerk shall be responsible for the official acts and negligence of his respective deputies. The Judge of said court shall hold at least two terms of said court each year in each of the divisions aforesaid, at such regular times as said Judge shall fix and determine, and shall be paid his actual traveling expenses and subsistence while attending and holding court at places other than Muscogee. All jurors for each term of said court, in each division, shall be selected and summoned in the manner provided in said act, three jury commissioners to be selected by said court for each division, who shall possess all the qualifications and perform in said division all the duties required by the jury commissioners provided for in said act. All prosecutions for crimes or offenses hereafter committed in said Indian Territory shall be cognizable within the division in which such crime or offense shall have been committed. And all civil suits shall be brought in the division in which the defendant or defendants reside; but if there be two or more defendants residing in different divisions, the action may be brought in any division in which either of the defendants resides. And all cases shall be tried in the division in which the process is returnable as herein provided, unless said judge shall direct such case to be removed to one of the other divisions: *Provided, however*, That the judicial tribunals of the Indian nations shall retain exclusive jurisdiction in all civil and criminal cases arising in the country in which members of the nation by nativity or by adoption shall be the only parties; and as to all such cases the laws of the State of Arkansas extended over and put in force in said Indian Territory by this act shall not apply.

SEC. 31. That certain general laws of the State of Arkansas in force at the close of the session of the general assembly of that State of eighteen hundred and eighty-three, as published in eighteen hundred and eighty-four, in the volume known as Mansfield's Digest of the Statutes of Arkansas, which are not locally inapplicable or in conflict with this act or with any law of Congress, relating to the subjects specially mentioned in this section, are hereby extended over and put in force in the Indian Territory until Congress shall otherwise provide, that is to say, the provisions of the said general statutes of Arkansas relating to administration, chapter one, and the United States court in the Indian Territory herein referred to shall have and exercise the powers of courts of probate under said laws; to public administrators, chapter two, and the United States Marshal of the Indian Territory shall perform the duties imposed by said chapter on the Sheriffs of said State; to arrest and bail, civil, chapter seven; to assignment for benefit of creditors, chapter eight; to attachments, chapter nine; to attorneys at law, chapter eleven; to bills of exchange and promissory notes, chapter fourteen; to civil rights, chapter eighteen; to common and statute law of England, chapter twenty; to contempts, chapter twenty-six; to municipal corporations, chapter twenty-nine, division one; to costs, chapter thirty; to descents and distributions, chapter forty-nine; to divorce, chapter fifty-two, and said court in the Indian Territory shall exercise the powers of the circuit courts of Arkansas under this chapter; to dower, chapter fifty-two; to evidence, chapter fifty-nine; to execution, chapter sixty; to fees, chapter sixty-three; to forcible entry and detainer, chapter sixty-seven; to frauds, statute of, chapter sixty-eight; to fugitives from justice, chapter sixty-nine; to gaming contracts, chapter seventy; to guardians, curators, and wards, chapter seventy-three, and said court in the Indian Territory shall appoint guardians and curators; to *habeas corpus*, chapter seventy-four; to injunction, chapter eighty-one; to insane persons and drunkards, chapter eighty-two, and said court in the Indian Territory shall exercise the powers of the probate courts of Arkansas under this charter; to joint and several obligations and contracts, chapter eighty-seven; to judgments and decrees, chapter eighty-eight; to judgments summary, chapter eighty-nine; to jury, chapter ninety; to landlord and tenant, chapter ninety-two; to legal notices and advertisements, chapter ninety-four; to liens, chapter ninety-six; to limitations, chapter ninety-seven; to mandamus and prohibition, chapter one hundred; to marriage contracts, chapter one hundred and two; to marriages, chapter one hundred and three; to married women, chapter one hundred and four; to money and interest, chapter one hundred and nine; to mortgages, chapter one hundred and ten; to notaries public, chapter one hundred and eleven, and said court in the Indian Territory shall appoint notaries public under this chapter; to partition and sale of lands, chapter one hundred and fifteen; to pleadings and practice, chapter one hundred and nineteen; to recorders, chapter one hundred and twenty-six; to replevin, chapter one hundred and twenty-eight; to venue, change of, chapter one hundred and fifty-three; and to wills and testaments, chapter one hundred and fifty-five; and whenever in said laws of Arkansas the courts of record of said State are mentioned the said court in the Indian Territory shall be substituted therefor; and wherever the clerks of said courts are mentioned in said laws the clerk of said court in the Indian Territory and his deputies, respectively, shall be substituted therefor; and wherever the sheriff of the county is mentioned in said laws the United States Marshal of the Indian Territory shall be substituted therefor, for the purpose, in each of the cases mentioned, of making said laws of Arkansas applicable to the Indian Territory.

That no attachment shall issue against improvements on real estate while the title to the land is vested in any Indian Nation, except where such improvements have been made by persons, companies, or corporations operating coal or other mines, railroads, or other industries under lease or permission of law of an Indian national council, or charter, or law of the United States.

That executions upon judgments obtained in any other than Indian courts shall not be valid for the sale or conveyance of title to improvements made upon lands owned by an Indian Nation, except in the cases wherein attachments are provided for. Upon a return of *nulla bona*, upon an execution upon any judgment against an adopted citizen of any Indian tribe, or against any person residing in the Indian country and not a citizen thereof, if the judgment debtor shall be the owner of any improvements upon real estate within the Indian Territory in excess of one hundred and sixty acres occupied as a homestead, such improvements may be subjected to the payment of such judgment by a decree of the court in which such judgment was rendered. Proceedings to subject such property to the payment of judgments may be by petition, of which the judgment debtor shall have notice as in the original suit. If on the hearing the court shall be satisfied from the evidence that the judgment debtor is the owner of improvements on real estate subject to the payment of said judgment the court may order the same sold, and the proceeds, or so much thereof as may be necessary to satisfy said judgment and costs, applied to the payment of said judgment; or if the improvement is of sufficient rental value to discharge the judgment within a reasonable time the court may appoint a receiver, who shall take charge of such property and apply the rental's receipts thereof to the payment of such judgment, under such regulations as the court may prescribe. If under such proceeding any improvement is sold only citizens of the tribe in which said property is situate may become the purchaser thereof.

The Constitution of the United States and all general laws of the United States which prohibit crimes and misdemeanors in any place within the sole and exclusive jurisdiction of the United States, except in the District of Columbia, and all laws relating to national banking associations, shall have the same force and effect in the Indian Territory as elsewhere in the United States; but nothing in this act shall be so construed as to deprive any of the courts of the civilized nations of exclusive jurisdiction over all cases arising wherein members of said nations, whether by treaty, blood, or adoption, are the sole parties, nor so as to interfere with the right and power of said civilized nations to punish said members for violation of the statutes and laws enacted by their national councils where such laws are not contrary to the treaties and laws of the United States.

SEC. 32. That the word "county," as used in any of the laws of Arkansas which are put in force in the Indian Territory by the provisions of this act, shall be construed to embrace the territory within the limits of a judicial division in said Indian Territory; and whenever in said laws of Arkansas the word "county" is used, the words "judicial division" may be substituted therefor, in said Indian Territory, for the purposes of this act. And whenever in said laws of Arkansas the word "State" or the words "State of Arkansas" are used, the word "Territory" or the words "Indian Territory" may be substituted therefor, for the purposes of this act, and for the purpose of making said laws of Arkansas applicable to the said Indian Territory; but all prosecutions therein shall run in the name of the "United States."

SEC. 33. That the provisions of chapter forty-five of the said general laws of Arkansas, entitled "Criminal Law," except as to the crimes and misdemeanor mentioned in the *proviso* to this section, and the provisions of chapter forty-six of said general laws of Arkansas, entitled "Criminal Procedure," as far as they are applicable, are hereby extended over and put in force in the Indian Territory, and jurisdiction to enforce said provisions is hereby conferred upon the United States Court therein: *Provided*, That in all cases where the laws of the United States and the said criminal laws of Arkansas have provided for the punishment of the same offenses the laws of the United States shall govern as to such offenses. *And provided further,* That the United States Circuit and District Courts, respectively, for the western district of Arkansas and the eastern district of Texas, respectively, shall continue to exercise exclusive jurisdiction as now provided by law in the

Indian Territory as defined in this act, in their respective districts as heretofore established, over all crimes and misdemeanors against the laws of the United States applicable to the said Territory, which are punishable by said laws of the United States by death or by imprisonment at hard labor, except as otherwise provived in the other sections of this act.

SEC. 34. That original jurisdiction is hereby conferred upon the United States Court in the Indian Territory to enforce the provisions of title twenty-eight, chapters three and four, of the Revised Statutes of the United States in said Territory, except the offenses defined and embraced in sections twenty-one hundred and forty-two and twenty-one hundred and forty-three: *Provided*, That as to the violations of the provisions of section twenty-one hundred and thirty-nine of said Revised Statutes, the jurisdiction of said court in the Indian Territory shall be concurrent with the jurisdiction exercised in the enforcement of such provisions by the United States Courts for the western district of Arkansas and the eastern district of Texas: *Provided*, That all violation of said chapters three and four, prior to the passage of this act, shall be prosecuted in the United States Courts, respectively, the same as if this act had not been passed.

SEC. 35. That exclusive original jurisdiction is hereby conferred upon the United States Court in the Indian Territory to enforce the provisions of chapter four, title seventy, of the Revised Statutes of the United States, entitled "Crimes Against Justice," in all cases where the crimes mentioned therein were committed in any judicial proceeding in the Indian Territory and where such crimes affected and impeded the enforcement of the laws in the courts established in said Territory: *Provided*, That all violations of the provisions of said chapter prior to the passage of this act shall be prosecuted in the United States Courts for the western district of Arkansas and the eastern district of Texas, respectively, the same as if this act had not been passed.

SEC. 36. That jurisdiction is hereby conferred upon the United States Court in the Indian Territory over all controversies arising between members or citizens of one tribe or nation of Indians and the members or citizens of other tribes or nation in the Indian Territory, and any citizen or member of one tribe or nation who may commit any offence or crime against the person or property of a citizen or member of another tribe or nation shall be subject to the same punishment in the Indian Territory as he would be if both parties were citizens of the United States. And any member or citizen of any Indian tribe or nation in the Indian Territory shall have the right to invoke the aid of said court therein for the protection of his person or property as against any person not a member of the same tribe or nation, as though he were a citizen of the United States.

SEC. 37. That if any person shall, in the Indian Territory, open, carry on, promote, make or draw, publicly or privately, any lottery, or scheme of chance of any kind or description, by whatever name, style or title the same may be denominated or known, or shall, in said Territory, vend, sell, barter or dispose of any lottery ticket or tickets, order or orders, device or devices, of any kind, for or representing any number of shares or any interest in any lottery or scheme of chance, or shall open or establish as owner or otherwise any lottery or scheme of chance in said Territory, or shall be in any wise concerned in any lottery or scheme of chance, by acting as owner or agent in said Territory, for or on behalf of any lottery or scheme of chance, to be drawn, paid or carried on, either out of or within said Territory, every such person shall be deemed guilty of a misdemeanor, and, on conviction thereof, shall be fined for the first offense, not exceeding five hundred dollars, and for the second offense shall, on conviction, be fined not less than five hundred dollars and not exceeding five thousand, and he may be imprisoned, in the discretion of the court, not exceeding one year. And jurisdiction to enforce the provisions of this section is hereby conferred upon the United States Court in said Indian Territory, and all persons therein, including Indians and members and citizens of Indian tribes and nations, shall be subject to its provisions and penalties.

SEC. 38. The clerk and deputy clerks of said United States Court shall have the power within their respective districts to issue marriage licenses or certificates and to solemnize marriages. They shall keep copies of all marriage licenses or certificates issued by them, and a record book in which shall be recorded all licenses or certificates after the marriage has been solemnized, and all persons authorized by law to solemnize marriages shall return the license or certificate, after executing the same, to the clerk or deputy clerk who issued it, together with his return thereon. They shall also be *ex officio* Recorders within their respective districts, and as such they shall perform such duties as are required of Recorders of Deeds under the said laws of Arkansas, and receive the fees and compensation therefor which are provided in said laws of Arkansas for like service: *Provided,* That all marriages heretofore contracted under the laws of tribal customs of any Indian nation now located in the Indian Territory are hereby declared valid, and the issue of such marriages shall be deemed legitimate and entitled to all inheritances of property or other rights, the same as in the case of the issue of other forms of lawful marriage: *Provided, further,* That said chapter one hundred and three of said laws of Arkansas shall not be construed so as to interfere with the operation of the laws governing marriage enacted by any of the civilized tribes, nor to confer any authority upon any officer of said court to unite a citizen of the United States in marriage with a member of any of the civilized nations until the preliminaries to such marriage shall have first been arranged according to the laws of the nation of which said Indian person is a member: *And provided further,* That where such marriage is required by law of an Indian nation to be of record, the certificate of such marriage shall be sent for record to the proper officer, as provided in such law enacted by the Indian nation.

SEC. 39. That the United States Court in the Indian Territory shall have all the powers of the United States Circuit Court or Circuit Court Judges to appoint commissioners within said Indian Territory, who shall be learned in the law, and shall be known as United States Commissioners; but not exceeding three commissioners shall be appointed for any one division, and such commissioners when appointed shall have, within the division designated in the order appointing them, all the powers of commissioners of circuit courts of the United States. They shall be *ex officio* notaries public, and shall have power to solemnize marriages. [The provisions of chapter ninety-one of the said laws of Arkansas, regulating the jurisdiction and procedure before Justices of the Peace, are hereby extended over the Indian Territory; and said commissioners shall exercise all the powers conferred by the laws of Arkansas upon Justices of the Peace within their districts; but they shall have no jurisdiction to try any cause where the value of the thing or the amount in controversy exceeds one hundred dollars.

Appeals may be taken from the final judgment of said commissioners to the United States Court in said Indian Territory in all cases and in the same manner that appeals may be taken from the final judgments of Justices of the

Peace under the provisions of said chapter ninety-one. The said court may appoint a constable for each of the commissioner's districts designated by the court, and the constable so appointed shall perform all the duties required of constables under the provisions of chapter twenty-four and other laws of the State of Arkansas. Each commissioner and constable shall execute to the United States, for the security of the public, a good and sufficient bond, in the sum of five thousand dollars, to be approved by the judge appointing him, conditioned that he will faithfully discharge the duties of his office and account for all moneys coming into his hands, and he shall take an oath to support the Constitution of the United States and to faithfully perform the duties required of him.

The appointment of United States commissioners by said court held at Muscogee, in the Indian Territory, heretofore made, and all acts in pursuance of law and in good faith performed by them, are hereby ratified and validated.

SEC. 40. That persons charged with any offense or crime in the Indian Territory, and for whose arrest a warrant has been issued, may be arrested by the United States Marshal or any of his deputies, wherever found in said Territory, but in all cases the accused shall be taken, for preliminary examination, before the commissioner in the judicial district whose office or place of business is nearest by the route usually traveled to the place where the offense or crime was committed; but this section shall apply only to crimes or offenses over which the courts located in the Indian Territory have jurisdiction: *Provided*, That in all cases where persons have been brought before a United States commissioner in the Indian Territory for preliminary examination, charged with the commission of any crime therein, and where it appears from the evidence that a crime has been committed, and that there is probable cause to believe the accused guilty thereof, but that the crime is one over which the courts in the Indian Territory have no jurisdiction, the accused shall not, on that account, be discharged, but the case shall be proceeded with as provided in section ten hundred and fourteen of the Revised Statutes of the United States.

SEC. 41. That the Judge of the United States Court in the Indian Territory shall have the same power to extradite persons who have taken refuge in the Indian Territory, charged with crimes in the States or other territories of the United States, that may now be exercised by the governor of Arkansas in that State, and he may issue requisitions upon governors of States or other Territories for persons who have committed offenses in the Indian Territory, and who have taken refuge in such States or Territories.

SEC. 42. That appeals and writs of error may be taken and prosecuted from the decisions of the United States Court in the Indian Territory to the Supreme Court of the United States in the same manner and under the same regulations as from the circuit courts of the United States, except as otherwise provided in this act.

SEC. 43. That any member of any Indian tribe or nation residing in the Indian Territory may apply to the United States Court therein to become a citizen of the United States, and such court shall have jurisdiction thereof and shall hear and determine such application as provided in the statutes of the United States; and the Confederated Peoria Indians residing in the Quapaw Agency, who have heretofore or who may hereafter accept their land in severalty under any of the allotment laws of the United States, shall be deemed to be, and are hereby, declared to be citizens of the United States from and after the selection of their allotments, and entitled to all the rights, privileges, and benefits as such, and parents are hereby declared from that time to have been and to be the legal guardians of their minor children without process of court: *Provided,* That the Indians who become citizens of the United States under the provisions of this act do not forfeit or lose any rights or privileges they enjoy or are entitled to as members of the tribe or nation to which they belong.

SEC. 44. That the following sum, or so much thereof as may be necessary, is hereby appropriated out of any money in the treasury not otherwise appropriated, to be disbursed under the direction of the Attorney General of the United States, in the same manner that similar appropriations are disbursed in the other territories of the United States, namely:

To pay the actual traveling and other expenses of the Judge of the United States Court holding court in said Indian Territory other than at Muscogee; to pay for the rent of buildings for the Supreme and District Courts; to provide jails and support prisoners; to pay mileage and *per diem* of jurors and witnesses; to provide books, records, and stationery for the judicial offices for the remainder of the fiscal year ending June thirtieth, eighteen hundred and ninety, the sum of ten thousand dollars.

REVISED STATUTES.

[The following sections of the Revised Statutes of the United States are specially referred to, and made part of the foregoing Organic Act, to wit:]

SEC. 1855. No law of any territorial legislature shall be made or enforced by which the Governor or Secretary of a Territory, or the members or officers of any territorial legislature, are paid any compensation other than that provided by the laws of the United States.

SEC. 1861. The subordinate officers of each branch of every [territorial] legislative assembly shall consist of one Chief Clerk, one Assistant Clerk, one Enrolling Clerk, one Engrossing Clerk, one Sergeant-at-Arms, one Door Keeper, one Messenger, and one Watchman.

SEC. 1887. Hereafter no expense for printing exceeding $4,000, including printing laws, journals, bills, and necessary printing of the same nature, shall be incurred for any session of the legislature of any of the territories.

SEC. 1888. No legislative assembly of a Territory shall, in any instance, or under any pretext, exceed the amount appropriated by Congress for its annual expenses.

SEC. 1909. Writs of error and appeals from the final decisions of the Supreme Court of [Oklahoma] shall be allowed to the Supreme Court of the United States, in the same manner and under the same regulations as from the Circuit Courts of the United States, where the value of the property or the amount in controversy to be ascertained by the oath of either party, or of other competent witnesses, exceeds one thousand dollars; except that a writ of error or appeal shall be allowed, to the Supreme Court of the United States, from the decision of the Supreme Court [of said Territory] or any Judge thereof upon writs of *habeas corpus*, involving the question of personal freedom.

SEC. 1910. Each of the District Courts in said Territory shall have and exercise the same jurisdiction in all cases arising under the Constitution and Laws of the United States as is vested in the Circuit and District Courts of the United States; and the first six days of every term [of said courts], or so much thereof as is necessary, shall be appropriated to the trial of causes arising under said Constitution and Laws; but writs of error and appeals, in all such cases, may be had to the Supreme Court of said Territory.

SEC. 1912. The Supreme and District Courts of said Territory, and the respective Judges thereof, may grant writs of *habeas corpus* in all cases in which the same are grantable by the Judges of the United States, in the District of Columbia.

SEC. 1914. The Judges of the Supreme Court [of Oklahoma Territory] or a majority of them shall, when assembled at the seat of government, define the judicial districts of said Territory, and assign the Judges to the several districts; and shall also fix the times and places of holding in the several counties or subdivisions of each district, and alter the times and places of holding the courts, as to them may seem proper and convenient; but not less than two terms a year shall be held at each place of holding court [in said Territory.]

SEC. 1920. The Secretary of the Territory of [Oklahoma] shall be, *ex-officio*, Superintendent of Public Buildings and Grounds, and shall have full control and management of all public buildings, in process of erection or to be hereafter erected, and of all grounds pertaining thereto; and he shall be under the direction of the Secretary of the Interior, who shall establish such rules in relation to the public buildings and grounds as he may deem necessary.

SEC. 1921. The Secretary of the Territory of [Oklahoma], upon the convening of the legislature thereof, shall administer the oath of office to the members-elect of the two Houses, and the officers thereof, when chosen; and no other person shall be competent to administer such oath, save in the absence of the Secretary, in which case any one member of either House may administer the oath to the presiding officer-elect, and he shall administer the same to the members and other officers.

SEC. 1934. The Supreme Court of the Territory of [Oklahoma] may hold adjourned terms thereof, at any time and place in the Territory agreed upon by a majority of the Judges of the court, at any regular time thereof. The order for an adjourned term shall be signed by a majority of the Judges thereof at a regular term of the court, and entered upon the minutes of the court; and any business which said court might do, at any regular term thereof, may be done at such adjourned term; and the Clerk of the Court shall be entitled to such mileage for attendance at such adjourned term as is by law allowed the Marshal of the [Territory] for his attendance on the courts of the Territory.

SEC. 1941. No payment of salary shall be made to the Governor, Secretary, Chief Justice, and Associate Justices, of [Oklahoma] Territory, until such officers have entered upon the duties of their respective appointments.

SEC. 1948. All general territorial laws of the Territory of [Oklahoma] in force in said Territory shall continue in force throughout said Territory until repealed by the legislative authority of that Territory, except such laws as relate to the possession or occupation of mines or mining claims.

SEC. 1951. All officers to be appointed by the President, by and with the advice and consent of the Senate, for the Territory of [Oklahoma] who, by virtue of the provisions of any law now existing, or which may be enacted by Congress, are required to give security for moneys that may be entrusted to them for disbursement, shall give such security at such time and in such manner as the Secretary of the Treasury may prescribe.

SEC. 2129. No person shall be permitted to trade with any of the Indians, in the Indian country, without a license therefor from a Superintendent of Indian Affairs, or Indian Agent, or Sub Agent, which license shall issue for a term not exceeding three years, for the tribes west of the Mississippi river.

SEC. 2133. Any person, other than an Indian, who shall attempt to reside in the Indian country as a trader, or to introduce goods, or to trade therein, without such license, shall forfeit all merchandise offered for sale to the Indians, or found in his possession, and shall moreover be liable to a penalty of five hundred dollars.

SEC. 2139. No ardent spirits shall be introduced, under any pretense, into the Indian country. Every person (except an Indian in the Indian country,) who sells, exchanges, gives, barters, or disposes of, any spirituous liquors or wine to an Indian under the charge of any Indian Superintendent or Agent, or introduces or attempts to introduce any spirituous liquors or wine into the Indian country, shall be punishable by imprisonment for not more than two years, and by a fine of not more than three hundred dollars. But it shall be a sufficient defense to any charge of introducing or attempting to introduce liquor into the Indian country, that the acts charged were done by order of and under authority from the War Department, or any officer duly authorized thereunto by the War Department.

SEC. 2296. No lands acquired under the provisions of this chapter [32] shall, in any event, become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor.

TOWN SITES.

SEC. 2382. In any case in which parties have already founded, or may hereafter desire to found, a city or town on the public lands, it may be lawful for them to cause to be filed with the Recorder for the county in which the same is situated, a plat thereof for not exceeding six hundred and forty acres, describing its exterior boundaries, according to the lines of the public surveys, where such surveys have been executed; also giving the name of such city or town, and exhibiting the streets, squares, blocks, lots and alleys, the size of the same, with measurements and area of each municipal subdivison the lots in which shall each not exceed 4,200 square feet, with a statement of the extent and general character of the improvements; such map and statement to be verified under oath by the party acting for and in behalf of the persons proposing to establish such city or town; and within one month after such filing there shall be transmitted to the general land office a verified transcript of such map, and statement accompanied by the testimony of two witnesses that such city or town has been established in good faith, and when the premises are within the limits of any organized land district, a similar map and statement shall be filed with the Register and Receiver, and at any time after the filing of such map, statement and testimony, in the general land office, it may be lawful for the President to cause the lots embraced within the limits of such city or town to be offered at public sale to the highest bidder, subject to a minimum of ten dollars for each lot; and such lots as may not be disposed of at public sale shall thereafter be liable to private entry at such minimum, or at such reasonable increase or diminution thereafter, as the Secretary of the Interior may order from time to time after at least three months' notice, in view of the increase or decrease in the value of the municipal property. But any actual settler upon any one lot, as above provided, and upon any additional lot, in which he may have substantial improvements, shall be entitled to prove up and purchase the same, as a pre-emption, at such minimum, at any time before the day fixed for the public sale.

SEC. 2383. When such cities or towns are established upon unsurveyed lands, it may be lawful, after the extension thereto of the public surveys, to adjust the extension limits of the premises according to those lines, where it can be done without interference with rights which may be vested by sale; and patents for all lots, so disposed of at public or private sale, shall issue as in ordinary cases.

SEC. 2387. Whenever any portion of the public lands have been or may be settled upon and occupied as a town site, not subject to entry under the agricultural pre-emption laws, it is lawful, in case such town be incorporated, for the corporate authorities thereof, and, if not incorporated, for the Judge of the County Court, for the county in which such town is situated, to enter at the proper land office, and at the minimum price, the land so settled and occupied, in trust for the several use and benefits of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the State or Territory in which the same may be situated.

SEC. 2388. The entry of the land provided for in the preceding section, shall be made, or a declaratory statement of the purpose of the inhabitants to enter it as a townsite shall be filed with the Register of the proper land office, prior to the commencement of the public sale of the body of land in which it is included, and the entry or declaratory statement shall include only such land as is actually occupied by the town. * * *

COURT FOR THE INDIAN TERRITORY.

AN ACT

To establish a United States Court in the Indian Territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a United States Court is hereby established, whose jurisdiction shall extend over the Indian Territory, bounded as follows, to wit: North by the State of Kansas, east by the States of Missouri and Arkansas, south by the State of Texas, and west by the State of Texas and the territory of New Mexico; and a Judge shall be appointed for said court by the President of the United States, by and with the advice and consent of the Senate, who shall hold his office for a term of four years, and until his successor is appointed and qualified, and receive a salary of three thousand five hundred dollars per annum, to be paid from the Treasury of the United States in like manner as the salaries of judges of the United States District Courts.

SEC. 2. That there shall be appointed by the President, by and with the advice and consent of the Senate, an Attorney and Marshal for said court, who shall continue in office for four years, and until their successors be duly appointed and qualified, and they shall discharge the like duties and receive the same fees and salary as now received by the United States Attorney and Marshal for the western district of Arkansas. The said Marshal may appoint one or more deputies, who shall have the same powers, perform the like duties, and be removable in like manner as other deputy United States Marshals; and said Marshal shall give bond, with two or more sureties, to be approved by the Judge of said court, in the sum of ten thousand dollars, conditioned as by law required in regard to the bonds of other United States Marshals.

SEC. 3. That a clerk of said court shall be appointed by the judge thereof, who shall reside and keep his office at the place of holding said court. Said clerk shall perform the same duties, be subject to the same liabilities, and shall receive the same fees and compensation as the clerk of the United States Court of the western district of Arkansas; and before entering upon his duties he shall give bond in the sum of ten thousand dollars, with two or more sureties, to be approved by the Judge of said court, conditioned that he will discharge his duties as required by law.

SEC. 4. That the Judge appointed under the provision of this act shall take the same oath required by law to be taken by the Judges of the District Courts of the United States; and the oath, when taken as in such cases provided, shall be duly certified by the officer before whom the same shall have been taken to the clerk of the court herein established, to be by him recorded in the records of said court. The clerk, marshal, and deputy marshals shall take before the judge of said court the oath required by law of the clerk, marshal, and deputy marshals of United States District Courts, the same to be entered of record in said court as provided by law in like cases.

SEC. 5. That the court hereby established shall have exclusive original jurisdiction over all offenses against the laws of the United States committed within the Indian Territory as in this act defined, not punishable by death or by imprisonment at hard labor.

SEC. 6. That the court hereby established shall have jurisdiction in all civil cases between citizens of the United States who are residents of the Indian Territory, or between citizens of the United States, or of any State or Territory therein, and any citizens of or person or persons residing or found in the Indian Territory, and when the value of the thing in controversy, or damages, or money claimed shall amount to one hundred dollars or more: *Provided*, That nothing herein contained shall be so construed as to give the court jurisdiction over controversies between persons of Indian blood only: *And provided further*, That all laws having the effect to prevent the Cherokee, Choctaw, Creek, Chickasaw and Seminole Nations, or either of them, from lawfully entering into leases or contracts for mining coal for a period not exceeding ten years, are hereby repealed; and said court shall have jurisdiction over all controversies arising out of said mining leases or contracts and of all questions of mining rights or invasions thereof where the amount involved exceeds the sum of one hundred dollars.

That the provisions of chapter eighteen, title thirteen, of the Revised Statutes of the United States shall govern such court, so far as applicable: *Provided*, That the practice, pleadings, and forms of proceeding existing at the time in like causes in the courts of record of the State of Arkansas, any rule of court to the contrary notwithstanding; and the plaintiff shall be entitled to like remedies by attachment or other process against the property of the defendant, and for like causes, as now provided by the laws of said State.

The final judgment or decree of the court hereby established, in cases where the value of the matter in dispute, exclusive of costs, to be ascertained by the oath of either party or of other competent witnesses, exceeds one thousand dollars may be reviewed and reversed or affirmed in the Supreme Court of the United States upon writ of error or appeal, in the same manner and under the same regulations as the final judgments and decrees of a Circuit Court.

SEC. 7. That two terms of said court shall be held each year at Muscogee, in said Territory, on the first Monday in April and September, and such special sessions as may be necessary for the dispatch of the business in said court at such times as the judge may deem expedient; and he may adjourn such special sessions to any other time previous to a regular term; and the Marshal shall procure suitable rooms for the use and occupation of the court hereby created.

SEC. 8. That all proceedings in said court shall be had in the English language; and *bona fide* male residents of the Indian Territory, over twenty-one years of age, and understanding the English language sufficiently to comprehend the proceedings of the court, shall be competent to serve as jurors in said court but shall be subject to exemptions and challenges as provided by law in regard to jurors in the District Court for the Western District of Arkansas.

SEC. 9. That the jurors shall be selected as follows: The court at its regular term shall select three jury commissioners, possessing the qualifications prescribed for jurymen, and who have no suits in court requiring the intervention of a jury, and the same persons shall not act as jury commissioners more than once in the same year. The judge shall administer to each commissioner the following oath:

"You do swear to discharge faithfully the duties required of you as jury commissioner; that you will not knowingly select any one as juryman whom you believe unfit and not qualified; that you will not make known to any one the name of any juryman selected by you and reported on your list to the court until after the commencement of the next term of this court; that you will not, directly or indirectly, converse with any one selected by you as a juryman concerning the merits of any cause or procedure to be tried at the next term of this court; so help you God."

SEC. 10. That the jury commissioners, after they have been appointed and sworn, shall retire to a jury room, or some other apartment designated by the Judge, and be kept free from the intrusion of any person, and shall not separate without leave of the Court until they have completed the duties required of them; that they shall select from the *bona fide* male residents of the Territory such number of qualified persons as the court shall designate, not less than sixty, free from all legal exception, of fair character and approved integrity, of sound judgment and reasonable information, to serve as petit jurors at the next term of court; shall write the names of such persons on separate pieces of paper, of as near the same size and appearance as may be, and fold the same so that the names thereon may not be seen. The names so written and folded shall be then deposited in a box, and after they shall be shaken and well mixed, the Commissioners shall draw from said box the names of thirty-seven persons, one by one, and record the same as drawn, which record shall be certified and signed by the Commissioners, and indorsed "List of petit jurors."

SEC. 11. That the said Commissioners shall then proceed to draw in like manner twelve other names, which shall be recorded in like manner on another paper, which shall be certified and signed by the Commissioners, and indorsed "List of alternate petit jurors." The two lists shall be inclosed and sealed so that the contents can not be seen, and indorsed "List of petit jurors." designating for what term of the court they are to serve, which indorsement shall be signed by the Commissioners, and the same shall be delivered to the Judge in open court; and the Judge shall deliver the lists to the Clerk in open court, and administer to the Clerk and his deputies the following oath:

"You do swear that you will not open the jury lists now delivered to you; that you will not, directly or indirectly, converse with any one selected as a petit juror concerning any suit pending and for trial in this court at the next term, unless by leave of the court; so help you God."

SEC. 12. That within thirty days before the next term, and not before, the Clerk shall open the envelopes and make a fair copy of the lists of petit jurors and alternate petit jurors, and give the same to the Marshal, who shall, at least fifteen days prior to the first day of the next term, summon the persons named as petit jurors and alternate petit jurors to attend on the first day of said term as petit jurors, by giving personal notice to each, or by leaving a written notice at the juror's place of residence with some person over ten years of age and there residing.

That the Marshal shall return said lists, with a statement in writing of the date and manner in which each juror was summoned; and if any juror or alternate legally summoned shall fail to attend, he may be attached and fined or committed as for contempt.

That if there shall not be a sufficient number of competent petit jurors and alternates present, and not excused, to form a petit jury, the court may compel the attendance of such absentees or order other competent persons to be summoned to complete the jurors.

SEC. 13. That if for any cause the Jury Commissioners shall not appoint or shall fail to select a petit jury as provided, or the panels selected be set aside, or the jury list returned in court shall be lost or destroyed, the court shall order the Marshal to summon a petit juror of the number hereinbefore designated, who shall be sworn to perform the duties of petit jurors as if they had been regularly selected; and this provision shall also apply in the formation of petit juries for the first term of the court. The want of qualification of any person selected as juror under section ten of this act shall not necessarily operate as cause of challenge to the whole panel.

SEC. 14. That the fees of the jurors and witnesses before said court herein created shall be the same as provided in the District Court of the United States for the western district of Arkansas.

SEC. 15. That in all criminal trials had in said court, in which a jury shall be demanded, and in which the defendant or defendants shall be citizens of the United States, none but citizens of the United States shall be competent jurors.

SEC. 16. That the Judge of the court herein established shall have the same authority to issue writs of *habeas corpus*, injunctions, mandamus, and other remedial process, as exists in the Circuit Court of the United States.

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SEC. 18. And all prosecutions for offenses committed in either of said last-mentioned counties shall be tried in the division of said eastern district of which said counties form a part: *Provided*, That no process issued or prosecution commenced or suit instituted before the passage of this act shall be in any way affected by the provisions thereof.

SEC. 19. That the Judge of the eastern judicial district of the State of Texas shall appoint a Clerk of said court, who shall reside at the city of Paris, in the county of Lamar.

SEC. 20. That every person who shall, in the Indian Territory, willfully and maliciously place any obstruction, by stones, logs, or any other thing, on the track of any railroad, or shall tear up or remove, burn, or destroy any part of any such railroad, or the works thereof, with the intent to obstruct the passage of any engine, car, or cars thereon, or to throw them off the track, shall be deemed guilty of malicious mischief, and, on conviction thereof, shall be sentenced to imprisonment at hard labor for any time not more than twenty years:

Provided, That if any passenger, employee, or other person shall be killed, either directly or indirectly, because of said obstruction, tearing up, removing, burning, or destroying, the person causing the same shall be deemed guilty of murder, and, upon conviction thereof, shall be punished accordingly.

SEC. 21. That any person aforesaid who shall, in the Indian Territory, willfully and intentionally destroy, injure, or obstruct any telegraph or telephone line, or any of the property or materials thereof, shall be deemed guilty of malicious mischief, and, on conviction thereof, shall be fined in any sum not more than five hundred dollars and imprisoned for any time not more than one year.

SEC. 22. That every person aforesaid, who shall, in the Indian Territory, maliciously or contemptuously disturb or disquiet any congregation or private family assembled in any church or other place for religious worship, or persons assembled for the transaction of church business, by profanely swearing or using indecent gestures, threatening language, or committing any violence of any kind to or upon any person so assembled, or by using any language or acting in any manner that is calculated to disgust, insult, or interrupt said congregation, shall, upon conviction thereof, be sentenced to imprisonment for any time not exceeding sixty days, or to a fine not exceeding one hundred dollars, or both such fine and imprisonment.

SEC. 23. That every person aforesaid who shall, in the Indian country, feloniously, willfully, and with malice aforethought, assault any person with intent to rob, and his counselors, aiders, and abettors, shall, on conviction thereof, be imprisoned at hard labor for a time not less than one nor more than fifteen years.

SEC. 24. That every person who shall, in the Indian Territory, knowingly mark, brand, or alter the mark or brand of any animal the subject of larency, the property of another, or who shall knowingly administer any poison to or maliciously expose any poisonous substance with the intent that the same shall be taken by any of the aforesaid animals, or shall willfully and maliciously, by any means whatsoever, kill, maim, or wound any of the aforesaid animals, shall be deemed guilty of malicious mischief, and, on conviction thereof, shall be sentenced to imprisonment for a period of not more than six months, or a fine of not more than two hundred dollars, or both such fine and imprisonment; and, in case the animal shall have been killed or injured by said malicious mischief, the jury trying the case shall assess the amount of damages which the owner of the animal shall have sustained by reason thereof, and, in addition to the sentence aforesaid, the court shall render judgment in favor of the party injured for threefold the amount of the damages so assessed by the jury, for which said amount execution may issue against the defendant and his property.

SEC. 25. That if any person, in the Indian country, assault another with a deadly weapon, instrument, or other thing, with an intent to inflict upon the person of another a bodily injury where no considerable provocation appears, or where the circumstances of the assault show an abandoned and malignant disposition, he shall be adjudged guilty of a misdemeanor, and, on conviction, shall be fined in any sum not less than fifty nor exceeding one thousand dollars and imprisoned not exceeding one year.

SEC. 26. That if any person shall maliciously and willfully set on fire any woods, marshes, or prairies, in the Indian Territory, with the intent to destroy the fences, improvements, or property of another, such person shall be fined in any sum not exceeding five hundred dollars, or be imprisoned not more than six months, or both, at the discretion of the court.

SEC. 27. That sections five, twenty-three, twenty-four, and twenty-five of this act shall not be so construed as to apply to offenses committed by one Indian upon the person or property of another Indian.

SEC. 28. That all laws and parts of laws inconsistent with the provisions of this act be, and the same are hereby, repealed.

Approved, March 1, 1889.

CENSUS OF 1890.

AN ACT

To provide for taking the eleventh census.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a census of the population, wealth, and industry of the United States shall be taken as of the date of June first, eighteen hundred and ninety.

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SEC. 9. It shall be the duty of each enumerator, after being qualified in the manner aforesaid, to visit personally each dwelling-house in his subdivision, and each family therein, and each individual living out of a family in any place of abode, and by inquiry made of the head of such family, or of the member thereof deemed most credible and worthy of trust, or of such individual living out of a family, to obtain each and every item of information and all the particulars required by this act, as of date June first, eighteen hundred and ninety. And in case no person shall be found at the usual place of abode of such family or individual living out of a family competent to answer the inquiries made in compliance with the requirements of this act, then it shall be lawful for the enumerator to obtain the required information, as nearly as may be practicable, from the family or families, or person or persons, living nearest to such place of abode. The Superintendent of Census may employ special agents or other means to make an enumeration of all Indians living within the jurisdiction of the United States, with such information as to their conditicn as may be obtainable, classifying them as to Indians taxed, and Indians not taxed.

* * * * * *

SEC. 15. That each and every person more than twenty years of age, belonging to any family residing in any enumeration district or subdivision, and in case of the absence of the heads and other members of any such family, then any representative of such family shall be, and each of them hereby is, required, if thereto requested by the Superintendent, supervisor, or enumerator to render a true account to the best of his or her knowledge, of every person belonging to such family, in the various particulars required by law, and whoever shall wilfully fail or refuse shall be guilty of a misdemeanor, and upon conviction thereof shall be fined in a sum not exceeding one hundred dollars.

And every president, treasurer, secretary, agent, director, or other officer of every corporation from which answers to any of the schedules porvided for by this act are herein required, who shall, if thereto requested by the Superintendent, supervisor, or enumerator, wilfully neglect or refuse to give true and complete answers to any inquiries authorized by this act, or shall wilfully give false information, shall be guilty of a misdemeanor and on conviction thereof shall be fined not exceeding ten thousand dollars, to which may be added imprisonment for a period not exceeding one year.

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SEC. 19. That the enumeration required by this act shall commence on the first Monday of June, eighteen hundred and ninety, and be taken as of that date, and each enumerator shall prosecute the canvass of his subdivision from that date forward on each week-day without intermission, except for sickness or other urgent cause; and any unnecessary cessation of his work shall be sufficient ground for his removal and the appointment of another person in his place; and any person so appointed shall take the oath required of enumerators, and shall receive compensation at the same rates. And it shall be the duty of each enumerator to complete the enumeration of his district, and to prepare the returns hereinbefore required to be made, and to forward the same to the supervisor of his district on or before the first day of July, eighteen hundred and ninety, and in any city having over ten thousand inhabitants under the census of eighteen hundred and eighty, the enumeration of population shall be taken within two weeks from the first Monday of June; and any delay beyond the dates above respectively, on the part of any enumerator, shall be sufficient cause for withholding the compensation to which he would be entitled by compliance with the provisions of this act, until proof satisfactory to the Superintendent of Census shall be furnished that such delay was by reason of causes beyond the control of such enumerator.

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SEC. 22. Any supervisor of census may, with the consent of the Superintendent of Census, remove any enumerator in his district, and fill the vacancy thereby caused or otherwise occurring; and in such cases but one compensation shall be allowed for the entire service, to be apportioned among the persons performing the same in the discretion of the Superintendent of Census.

Approved March 1, 1889.

AN ACT

To provide for town site entries of lands in what is known as "Oklahoma," and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the public lands situated in the Indian territory and also in the tract of country known as No Man's Land adjoining the Indian territory on the west, as may be necessary to embrace all the legal subdivisions covered by actual occupancy for purposes of trade and business not exceeding one thousand two hundred and eighty acres in each case may be entered as town sites for the several uses and benefits of the occupants thereof by three trustees for each county not more than two of whom shall be of the same political party, to be appointed by the Secretary of the Interior for that purpose and such entry to be made under the provisions of section two thousand three hundred and eighty seven revised statutes, as near as may be, and when such entry shall have been made the Secretary of the Interior shall provide regulations for the proper execution of the trust, including such survey of the land into streets, alleys, squares, blocks and lots as may be necessary, or the approval of such surveys as may already have been made by the inhabitants thereof; the assessment on the lots of such sum as may be necessary to pay for the land embraced in such town site, costs of survey, conveyance of lots and other necessary expenses.

SEC. 2. That in the execution of such trust, and for the purpose of the conveyance of the title by said trustee, any certificate or other paper, evidence of claim duly issued by the authority recognized for such purposed by the people residing upon any townsite, the subject of entry hereunder, shall be taken as evidence of occupancy by the holder thereof of the lot or lots therein described, except that where there is an adverse claim to said property such certificate shall be *prima facie* evidence of the claim of occupancy of the holder; provided that nothing in this act contained shall be so construed as to make valid any claim now invalid of those who entered upon and occupied said lands in violation of the laws of the United States or the proclamation of the President; provided further, that the certificates hereinbefore mentioned shall not be taken as evidence in favor of any person claiming lots who entered upon said lots in violation of the law or the proclamation of the President thereunder.

SEC. 3. The lots or land occupied by any religious organization, incorporated or otherwise conforming to approved survey within limits of such town site shall be conveyed to or in trust for the same.

SEC. 4. That all lots not disposed of as hereinbefore provided for shall be sold for the benefit of the municipal government of any such town, or the same or part thereof may be reserved for public use as sites for public buildings, or for the purpose of parks, if in the judgment of the Secretary of the Interior such reservation would be for the public interest.

SEC. 5. That the provisions of sections four, five, six, seven, eight, nine and ten, of an Act of the Legislature of the State of Kansas, entitled "An Act relating to town sites," approved March 2, 1868, shall, as far as applicable, govern the Trustees in the performance of their duties. [See complete copy of these sections below.]

SEC. 6. That the Trustees appointed under this act shall have the power to administer oaths, shall keep a record of their proceedings, which they shall, with all papers filed with them, and all evidence of their official acts except conveyances, be filed in the General Land Office and become part of the records of the same. They shall be allowed such compensation as the Secretary of the Interior may prescribe, not exceeding ten dollars per day while actually employed, and the Secretary of the Interior shall also provide them with necessary clerical force by detail or otherwise.

SEC. 7. That the sum of ten thousand dollars or as much thereof as may be necessary, is hereby appropriated to carry into effect the provisions of this act.

SEC. 8. That whenever there is a conflict between a homestead claimant and the occupants of a town site for any portion of the tract sought to be entered under the provisions of this act the same shall take precedence of the ordinary business of the office, and [be] heard and determined as soon as practicable by the Register and Receiver of the District in which the land is situated; and if an appeal shall be taken from the decision of the local office in any case disposed of hereinunder, or from the decision and determination of the said Commissioners, to the Commissioner of the General Land Office, the same shall be made special and disposed of by him as expeditiously as the duties of his office will permit, and so if an appeal should be taken to the Secretary of the Interior.

SEC. 9. That all town site applications heretofore filed in the proper land office shall have the same force and effect as if made under the provisions of this act, and upon the application of the Commissioners provided for herein such town site entry shall be allowed in the name of said Commissioners as

Trustees, upon the applications theretofore filed, but nothing herein contained shall be construed as extending to the rights of the town site or any claimant thereto or therein, or of impairing rights heretofore secured under existing law.

Approved May—1890.

THE KANSAS STATUTE.

[The sections of the Kansas Statute referred to in section four and made a part of the above are as follows:]

SEC. 4. At any time after the entry of any such town site, the Probate Judge of the county in which such town may be situated may appoint three Commissioners, who shall not be residents of such town, or the owners of any interests therein; and it shall be the duty of such Commissioners to cause an actual survey of such site to be made, conforming as near as may be to the original survey of such town, designating, on such plat, the lots or squares on which improvements are standing, with the name of owner or owners thereof, together with the value of the same.

SEC. 5. Said Commissioners shall, as soon as the survey and plat shall be completed, cause to be published in some newspaper published in the county in which the town is situated, a notice that such survey has been completed, and giving notice to all persons concerned or interested in such town site that, on a designated day, the said Commissioners will proceed to set off to the persons entitled to the same, according to their respective interests, the lots, squares or grounds to which each of the occupants thereto is entitled. Such publication shall be made at least thirty days prior to the day set apart by such Commissioners to make such decision.

SEC. 6. After such publication shall have been duly made, the Commissioners shall proceed, on the day designated in such publication, to set apart to the persons entitled to receive the same, the lots, squares or grounds to which each shall be entitled, according to their respective interests, including in the portion or portions set apart to each person or company of persons, the improvements belonging to such persons or company.

SEC. 7. After the setting apart of such lots or grounds and the valuation of the same, as hereinbefore provided for, the said Commissioner shall proceed to levy a tax on the lots and improvements thereon, according to their value, sufficient to raise a fund to reimburse to the parties who may have entered such site, the sum or sums paid by them in securing the title to such site, together with all the expenses accruing in perfecting the same, the fees due the Commissioners and the Surveyor, of their respective services, and other necessary expenses connected with the proceedings.

SEC. 8. Such Commissioners shall make due return of their proceedings to the Probate Judge, within ten days after the completion of their duties under this act, and shall, with such return, file all the papers, plats, valuations and assessments connected with such proceedings.

SEC. 9. The said Probate Judge shall then proceed to collect the taxes, levied as aforesaid, and he shall make deeds to the lots so set apart to the various parties entitled to the same; but no deed shall be made to any such person until such person shall have first fully paid all the tax or assessment so levied against him; and in case any person shall refuse or neglect to pay such tax or assessment so made against him, the Probate Judge may proceed to offer such lots and improvements for sale, to the highest bidder, first giving such public notice as may be required in case of execution against the lands and tenements of a debtor in a District Court.

SEC. 10. The Probate Judge shall reimburse the party or parties who may have entered and secured the title to such site, together with all necessary expenses incurred, out of the fund thus provided, taking their receipts therefor; which receipt shall be filed with the papers returned by the Commissioners, and kept by him among the records of the court.

STATUTES AT LARGE.

TERRITORIAL RESTRICTIONS.

AN ACT

To prohibit the passage of local or special laws in the Territories of the United States, to limit Territorial indebtedness, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That the legislatures of the Territories of the United States now or hereafter to be organized shall not pass local or special laws in any of the following enumerated cases, that is to say:

Granting divorces.

Changing the names of persons or places.

Laying out, opening, altering, and working roads or highways.

Vacating roads, town-plats, streets, alleys, and public grounds.

Locating or changing county seats.

Regulating county and township affairs.

Regulating the practice in courts of justice.

Regulating the jurisdiction and duties of Justices of the Peace, Police Magistrates, and Constables.

Providing for changes of venue in civil and criminal cases.

Incorporating cities, towns, or villages, or changing or amending the charter of any town, city, or village.

For the punishment of crimes or misdemeanors.

For the assessment and collection of taxes for Territorial, county, township, or road purposes.

Summoning and impaneling grand or petit jurors.

Providing for the management of common schools.

Regulating the rate of interest on money

The opening and conducting of any election or designating the place of voting.

The sale or mortgage of real estate belonging to minors or others under disability.

The protection of game or fish.

Chartering or licensing ferries or toll bridges.

Remitting fines, penalties, or forfeitures.

Creating, increasing, or decreasing fees, percentage, or allowances of public officers during the term for which said officers are elected or appointed.

Changing the law of descent.

Granting to any corporation, association, or individual the right to lay down railroad tracks, or amending existing charters for such purpose.

Granting to any corporation, association, or individual any special or exclusive privilege, immunity, or franchise whatever.

In all other cases where a general law can be made applicable, no special law shall be enacted in any of the Territories of the United States by the Territorial legislature thereof.

SEC. 2. That no Territory of the United States now or hereafter to be organized, or any political or municipal corporation or subdivision of any such Territory, shall hereafter make any subscription to the capital stock of any incorporated company, or company or association having corporate powers, or in any manner loan its credit to or use it for the benefit of any such company or association, or borrow any money for the use of any such company or association.

SEC. 3. That no law of any Territorial legislature shall authorize any debt to be contracted by or on behalf of such Territory, except in the following cases: To meet a casual deficit in the revenues, to pay the interest upon the Territorial debt, to suppress insurrections, or to provide for the public defence, except that, in addition to any indebtedness created for such purposes, the legislature may authorize a loan for the erection of penal, charitable, or educational institutions for such Territory, if the total indebtedness of the Territory is not thereby made to exceed one percentum upon the assessed value of the taxable property in such Territory as shown by the last general assessment for taxation. And nothing in this act shall be construed to prohibit the refunding of any existing indeptedness of such Territory or of any political or municipal corporation, county, or other subdivision therein.

SEC. 4. That no political or municipal corporation, county, or other subdivision in any of the Territories of the United States shall ever become indebted in any manner or for any purpose to any amount in the aggregate, including existing indebtedness, exceeding four percentum on the value of the taxable property within such corporation, county, or subdivision, to be ascertained by the last assessment for Territorial and county taxes previous to the incurring of such indebtedness; and all bonds or obligations in excess of such amount given by such corporation shall be void: That nothing in this act contained shall be so construed as to affect the validity of any act of any Territorial legislature heretofore enacted, or of any obligations existing or contracted thereunder, nor to preclude the issuing of bonds already contracted for in pursuance of express provisions of law; nor to prevent any Territorial legislature from legalizing the acts of any county, municipal corporation, or subdivision of any Territory, as to any bonds heretofore issued or contracted to be issued.

SEC. 5. That section eighteen hundred and eighty-nine, title twenty-three, of the Revised Statutes of the United States be amended to read as follows:

"The legislative assemblies of the several Territories shall not grant private charters or special privileges, but they may, by general incorporation acts, permit persons to associate themselves together as bodies corporate for mining, manufacturing, and other industrial pursuits, and for conducting the business of insurance, banks of discount and deposit (but not of issue), loan, trust, and guarantee associations, and for the construction or operation of railroads, wagon roads, irrigating ditches, and the colinization and improvement of lands in connection therewith, or for colleges, seminaries, churches. libraries, or any other benevolent, charitable, or scientific association."

SEC. 6. That nothing in this act contained shall be construed to abridge the power of Congress to annul any law passed by a Territorial legislature, or to modify any existing law of Congress requiring in any case that the laws of any Territory shall be submitted to Congress.

SEC. 7. That all acts and parts of acts hereafter passed by the Territorial legislature in conflict with the provisions of this act shall be null and void.

Approved, July 30, 1886. [Statutes at Large, Vol. 24; Ch. 818.]

SEC. 6. That upon the completion of said allotments and the patenting of the lands to said allottees, each and every member of the respective bands or tribes of Indians to whom allottments have been made shall have the benefit of and be subject to the laws, both civil and criminal, of the State or Territory in which they may reside; and no Territory shall pass or enforce any law denying any such Indian within its jurisdiction the equal protection of the law. And every Indian born within the territorial limits of the United

States to whom allotments shall have been made under the provissions of this act, or under any law or treaty, and every Indian born within the territorial limits of the United States who has voluntarily taken up, within said limits, his residence separate and apart from any tribe of Indians therein, and has adopted the habits of civilized life, is hereby declared to be a citizen of the United States, and is entitled to all the rights, privileges, and immunities of such citizens, whether said Indian has been or not, by birth or otherwise, a member of any tribe of Indians within the territorial limits of the United States, without in any manner impairing or otherwise affecting the right of any such Indian to tribal or other property. [Statutes at Large, Vol. 24; Ch. 119.]

ALIEN OWNERSHIP.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. That it shall be unlawful for any person or persons not citizens of the United States, or who have not lawfully declared their intention to become such citizens, or for any corporation not created by or under the laws of the United States or of some State or Territory of the United States, to hereafter acquire, hold, or own real estate so hereafter acquired, or any interest therein, in any of the Territories of the United States or in the District of Columbia, except such as may be acquired by inheritance or in good faith in the ordinary course of justice in the collection of debts heretofore created: *Provided,* That the prohibition of this section shall not apply to cases in which the right to hold or dispose of lands in the United States is secured by existing treaties to the citizens or subjects of foreign countries, which rights, so far as they may exist by force of any such treaty, shall continue to exist so long as such treaties are in force, and no longer. [Statutes at Large, Vol. 24; Ch. 340.]

TERRITORIAL MARRIAGES.

SEC. 9. That every ceremony of marriage, or in the nature of a marriage ceremony, of any kind, in any of the Territories of the United States, whether either or both or more of the parties to such ceremony be lawfully competent to be the subjects of such marriage or ceremony or not, shall be certified by a certificate stating the fact and nature of such ceremony, the full names of each of the parties concerned, and the full name of every officer, priest, and person, by whatever style or designation called or known, in any way taking part in the performance of such ceremony, which certificate shall be drawn up and signed by the parties to such ceremony and by every officer, priest, and person taking part in the performance of such ceremony, and shall be by the officer, priest, or other person solemnizing such marriage or ceremony filed in the office of the Probate Court, or, if there be none, in the office of court having probate powers in the county or district in which such ceremony shall take place, for record, and shall be immediately recorded, and be at all times subject to inspection as other public records. Such certificate, or the record thereof, or a duly certified copy of such record, shall be *prima facie* evidence of the facts required by this act to be stated therein, in any proceeding, civil or criminal, in which the matter shall be drawn in question. Any person who shall wilfully violate any of the provisions of this section shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine of not more than one thousand dollars, or by imprisonment not longer than two years, or by both said punishments, in the discretion of the court.

SEC. 10. That nothing in this act shall be held to prevent the proof of marriage, whether lawful or unlawful, by any evidence now legally admissible for that purpose. [Statutes at Large, Vol, 24; Ch. 397.]

TITLE XXX.*

NATURALIZATION.

§ 2165. Aliens, how naturalized.
2166. Aliens honorably discharged from military service.
2167. Minor residents.
2168. Widow and children of declarants.
2169. Aliens of African nativity and descent.
2170. Residence of five years in United States.
§ 2171. Alien enemies not admitted.
2172. Children of persons naturalized under certain laws.
2173. Police court of District of Columbia has no power to naturalize foreigners.
2174. Naturalization of seamen.

(267) Declaration; oath; residence; renunciation; certain residents. § 2165. An alien may be admitted to become a citizen of the United States in the following manner, and not otherwise:

First. He shall declare on oath, before a circuit or district court of the United States, or a district or supreme court of the territories, or a court of record of any of the states having common-law jurisdiction, and a seal and clerk, two years, at least, prior to his admission, that it is *bona fide* his intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty of which the alien may be at the time a citizen or subject.

Second. He shall, at the time of his application to be admitted, declare, on oath, before some one of the courts above specified, that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to every foreign prince, potentate, state, or sovereignty; and, particularly, by name, to the prince, potentate, state or sovereignty of which he was before a citizen or subject; which proceeding shall be recorded by the clerk of the court.

Third. It shall be made to appear to the satisfaction of the court admitting such alien that he has resided within the United States five years at least, and within the state or territory where such court is at the time held, one year at least; and that during that time he has behaved as a man of a good moral character, attached to the principles of the constitution of the United States, and well disposed to the good order and happiness of the same; but the oath of the applicant shall in no case be allowed to prove his residence.

Fourth. In case the alien applying to be admitted to citizenship has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, he shall, in addition to the above requisites, make an express renunciation of his title or order of nobility in the court to which his application is made, and his renunciation shall be recorded in the court.

Fifth. Any alien who was residing within the limits and under the jurisdiction of the United States before the twenty-ninth day of January, one thousand seven hundred and ninety-five, may be admitted to become a citizen, on due proof made to some one of the courts above specified, that he has resided two years, at least, within the jurisdiction of the United States, and one year, at least, immediately preceding his application, within the state or territory where such court is at the time held; and on his declaring on oath that he will support the constitution of the United States, and that he absolutely and entirely renounces and abjures all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty, and, particularly, by name, to the prince, potentate, state, or sovereignty whereof he was before a citizen or subject; and, also, on its appearing to the satisfaction of the court, that during such term of two years he has behaved as a man of good moral character, attached to the constitution of the United States, and well disposed to the good order and happiness of the same; and where the alien, applying for admission to citizenship, has borne any hereditary title, or been of any of the orders of nobility in the kingdom or state from which he came, on his, moreover, making in the court an express renunciation of his title or order of nobility. All of the proceedings required in this condition to be performed in the court, shall be recorded by the clerk thereof.

Sixth. Any alien who was residing within the limits and under the jurisdiction of the United States, between the eighteenth day of June, one thousand seven hundred and ninety-eight, and the eighteenth day of June, one thousand eight hundred and twelve, and who has continued to reside within the same, may be admitted to become a citizen of the United States without having made any previous declaration of his intention to become such; but whenever any person, without a certificate of such declaration of intention, makes application to be admitted a citizen, it must be proved to the satisfaction of the court, that the applicant was residing within the limits and under the jurisdiction of the United States before the eighteenth day of June, one thousand eight hundred and twelve, and has continued to reside within the same; and the residence of the applicant within the limits and under the jurisdiction of the United States, for at least five years immediately preceding the time of such application, must be proved by the oath of citizens of the United States, which citizens shall be named in the record as witnesses; and such continued residence within the limits and under the jurisdiction of the United States, when satisfactorily proved, and the place where the applicant has resided for at least five years, shall be stated and set forth, together with the names of such citizens, in the record of the court admitting the applicant; otherwise the same shall not entitle him to be considered and deemed a citizen of the United States.

[*Be it enacted by the senate and house of representatives of the United States of America, in congress assembled*, That the declaration of intention to become a citizen of the United States, required by section two thousand one hundred and sixty-five of the Revised Statutes of the United States, may be made by an alien before the clerk of any of the courts named in said section two thousand one hundred and sixty-five; and all such declarations heretofore made before any such clerk, are hereby declared as legal and valid as if made before one of the courts named in said section.]

(268) Honorably discharged from military service. § 2166. Any alien, of the age of twenty-one years and upward, who has enlisted, or may enlist, in the armies of the United States, either the regular or the volunteer forces, and has been, or may be hereafter, honorably discharged, shall be admitted to become a citizen of the United States, upon his petition, without any previous declaration of his intention to become such; and he shall not be required to prove more than one year's residence within the United States previous to his application to become such citizen; and the court admitting such alien shall, in addition to such proof of residence and good moral character, as now provided by law, be satisfied by competent proof of such person's having been honorably discharged from the service of the United States.

(269) Minor residents. § 2167. Any alien, being under the age of twenty-one years, who has resided in the United States three years next preceding his arriving at that age, and who has continued to reside therein to the time he may make application to be admitted a citizen thereof, may, after he arrives at the age of twenty-one years, and after he has resided five years within the United States, including the three years of his minority, be admitted a citizen of the United States, without having made the declaration required in the first condition of section twenty-one hundred and sixty-five; but such alien shall make the declaration required therein at the time of his admission; and shall further declare, on oath, and prove to the satisfaction of the court, that, for two years next preceding, it has been his *bona fide* intention to become a citizen of the United States; and he shall in all other respects comply with the laws in regard to naturalization.

(270) Widow and children of declarants. § 2168. When any alien, who has complied with the first condition specified in section twenty-one hundred and sixty-five, dies before he is actually naturalized, the widow and the children of such alien shall be considered as citizens of the United States, and shall be entitled to all rights and privileges as such, upon taking the oaths proscribed* by law.

(271) African nativity. § 2169. The provisions of this title shall apply to aliens (being free white persons, and to aliens) of African nativity and to persons of African descent.

(272) Residence of five years. §2170. No alien shall be admitted to become a citizen who has not for the continued term of five years next preceding his admission resided in the United States.

(273) Enemies not admitted. § 2171. No alien who is a native citizen or subject, or a denizen of any country, state, or sovereignty with which the United States are at war, at the time of his application, shall be then admitted to become a citizen of the United States; but persons resident within the United States, or the territories thereof, on the eighteenth day of June, in the year one thousand eight hundred and twelve, who had before that day made a declaration, according to law, of their intention to become citizens of the United States, or who were on that day entitled to become citizens without making such declaration, may be admitted to become citizens thereof, notwithstanding they were alien enemies at the time and in the manner prescribed by the laws heretofore passed on that subject; nor shall anything herein contained be taken or construed to interfere with or prevent the apprehension and removal, agreeably to law, of any alien enemy at any time previous to the actual naturalization of such alien.

(274) Children of persons naturalized. § 2172. The children of persons who have been duly naturalized under any law of the United States, or who, previous to the passing of any law on that subject, by the government of the United States, may have become citizens of any one of the states, under the laws thereof, being under the age of twenty-one years at the time of the naturalization of their parents, shall, if dwelling in the United States, be considered as citizens thereof; and the children of persons who now are, or have been, citizens of the United States, shall, though born out of the limits and jurisdiction of the United States, be considered as citizens thereof; but no person heretofore proscribed by any state, or who has been legally convicted of having joined the army of Great Britain during the revolutionary war, shall be admitted to become a citizen without the consent of the legislature of the state in which such person was proscribed.

(275) Police court, D. C. § 2173. The police court of the District of Columbia shall have no power to naturalize foreigners

(276) Of seamen. § 2174. Every seaman, being a foreigner, who declares his intention of becoming a citizen of the United States in any competent court, and shall have served three years on board of a merchant vessel of the

United States subsequent to the date of such declaration, may, on his application to any competent court, and the production of his certificate of discharge and good conduct during that time, together with the certificate of his declaration of intention to become a citizen, be admitted a citizen of the United States; and every seaman, being a foreigner, shall, after his declaration of intention to become a citizen of the United States, and after he shall have served such three years, be deemed a citizen of the United States for the purpose of manning and serving on board any merchant vessel of the United States, anything to the contrary in any act of congress notwithstanding; but such seaman shall, for all purposes of protection as an American citizen, be deemed such, after the filing of his declaration of intention to become such citizen.

SYNOPSIS

OF THE PROVISIONS OF

NEBRASKA GENERAL STATUTES

IN FORCE IN

OKLAHOMA TERRITORY.

In Virtue of the Act of Congress, Approved May—1890.

CHAPTER II.

ARTICLE 2.—AGRICULTURE—FENCES.

SECTION 1. Land owners may plant hedges on line of highway, and maintain protection fence six feet outside thereof for seven years.

SEC. 2. Adjoining proprietors shall make and maintain division fences between their enclosures; and any one fencing to an existing enclosure shall pay a just proportion of present value of the dividing fence, to be determined, if necessary, by fence viewers—each party to choose one. If viewers disagree, they shall choose a third, any two of whom may decide—and report to be filed with County Clerk.

SEC. 9. Party neglecting to comply with foregoing provisions, shall pay resulting damages, to be ascertained by fence viewers.

SEC. 10. On sixty days notice, division fence may be removed, but only between December 1, and April 1.

SEC. 12. Division fences accidentally destroyed, shall be replaced on ten days notice. On failure, may be erected by other party, at costs of failing party.

SEC. 15. In organized counties, Justices of the Peace are all fence viewers, and receive one dollar per day. Expenses to be divided, except in cases of default.

SEC. 18. A rail fence is six rails, with stakes and rider.

A board fence is three five inch boards, on posts eight feet apart. A pole fence is four poles, on posts seven feet apart. A wire fence is four No. 9 wires on posts one rod apart, with stake between. A hedge fence is, if orange, plants eight inches apart; if willow, fifteen inches apart. "Warner's patent" fence is four and a-half feet high, with five inch boards. In counties not subject to herd law, persons planting crops on unenclosed ground, liable to damages.

CHAPTER II.

ARTICLE 3.—HERD LAW.

SECTION I. Owners of live stock liable for damages done by same on cultivated land; and damages are a lien on trespassing stock; which may be empounded; in which case the owner must be notified to pay the damages within forty-eight hours: on refusal to make payment within the next forty-eight hours, or to appoint an arbitrator, stock shall be sold as upon execution. In case of disagreement of parties, the damages to be fixed by arbitrators.

SEC. 6. Arbitrators shall make a sworn award, to be filed within five days with a Justice, and it shall operate as a judgment lien; but an appeal may be had; arbitrators allowed two dollars each.

SEC. 7. If owner of stock is unknown, taker-up shall proceed as in case of estrays; and "cultivated land" means hedge rows, and forest and fruit trees, and land surrounded by a plowed strip, which is plowed once each year.

SEC. 14. No live stock shall run at large during the night time; owner of such liable for damages done.

CHAPTER II.

ARTICLE 4.—DAMAGES TO CULTIVATED LAND.

SECTION I. Persons going without leave, upon cultivated or enclosed land of another or their dogs, and doing damage are guilty of misdemeanor, and fineable in double the amount of damage, and liable for the damage. Persons on such land refusing to leave the same, on request of owner, liable to a fine of five to fifty dollars.

SHADE TREES.

SEC. 3. Corporate authorities of cities and villages, shall cause shade trees to be planted along the streets, not more than twenty feet apart; and levy a tax on each adjacent lot, of one to five dollars; but if owner plant the trees, he is exempt from the tax.

SEC. 8. Persons materially injuring such trees, to pay fine of five to fifty dollars; one-half to owner of trees, and the other to the school fund.

CHAPTER VI.

ASSIGNMENTS.

SEC. 2. Assignments for the benefit of creditors shall embrace all the property of assignor, not exempt from execution.

SEC. 6. Of real estate, shall be acknowledged, and recorded in County Clerk's office within twenty-four hours, and also in the deed record, in every county where real estate is situated within thirty days. Failure to so record will avoid the assignment, and assignees shall be responsible.

SEC. 7. All general assignments for creditors shall be to the sheriff, who shall take immediate possession.

SEC. 8. Within ten days, a verified inventory shall be filed with County Judge, to be recorded, showing, *first*, credits; *second*, residence of creditors; *third*, sum and nature of debts; *fourth*, consideration; *fifth*, mortgages, judgments, and other securities; *sixth*, property exempt; *seventh*, all other property, and the encumbrances thereon, and value thereof.

SEC. 9. County Judge to fix a day within fifteen days for creditors' meeting, at his office, to choose assignee, and give newspaper advertisement, and within two days after, send a copy to each creditor.

SEC. 10. Assembled creditors to choose assignee by ballot, each creditor casting one vote, but a majority of gross indebtedness necessary for a choice—each creditor to verify his claim by oath.

SEC. 12. An appraisement to be immediately made.

SEC. 13. Within forty-eight hours thereafter Assignee shall give bond in double the appraisement, to be recorded by County Clerk.

SEC. 16. On meeting day the County Judge shall fix a day between thirty and sixty days thereafter, for filing claims, of which the notice aforesaid shall be given; Assignor may file offsets—and both shall be barred, if not so filed. On the day following, uncontested claims shall be allowed and recorded. On contested claims the County Judge shall order pleadings in ordinary form, and proceed to trial; continuance not to extend sixty days from commencement. Judgment for whole claim shall carry costs—if wholly disallowed, claimant shall pay costs—if in part, costs to be apportioned—appeals allowed to District Court within twenty days.

SEC. 20. On return of inventory, and bond given, Assignee shall sell as on execution. Sales of real estate to be examined and confirmed by District Court; but creditors, at first meeting may require the personalty to be sold at private sale; the Judge to fix manner of sale, and kind of notice; but not less than appraised value unless creditors otherwise direct.

SEC. 21. Sales to be reported to County Court.

SEC. 22. Distribution shall be ordered, three months after inventory, and may be enforced by attachment.

SEC. 24. *First*—Payment of fees; *Second*—Public taxes or assessments; *Third*—Preferred claims; *Fourth*—Creditors, *pro rata.*

SEC. 25. On contested claims undetermined at the time, Assignee shall retain full amount claimed, and when contest is ended, shall pay amount certified by Clerk; and final order of distribution, when all contests are ended; and Assignee discharged after hearing on notice as aforesaid.

SEC. 28. Fees allowed are, Attorney's, ten dollars for Deed of Assignment; to Clerk, the fees allowed in other cases; to Assignee and Appraisers, as allowed by Court, not more than two dollars per day; to Judge ten cents and postage for each notice, and five cents for filing each paper; for each uncontested claim, ten cents; for recording, five cents per folio, exclusive of numerals; for order of distribution, (not exceeding three,) five dollars; other orders, fifty cents; for each meeting of creditors, one dollar per day; for certified copy of order, fifty cents; to District Court, for order respecting sale of real estate, ordinary fees; for newspaper notices, fifty cents per square of unleaded nonpareil for first, and one-half that for each other insertion; to Assignee, allowance by Court, not exceeding ten per cent on first one thousand dollars, and five per cent on excess; to assistants at sale, amount previously fixed by Judge; to Attorneys, in contested cases, amount agreed on by two-thirds in amount of creditors; to Assignee, expenses of rents, fuel, lights and insurance; and judgments for costs.

SEC. 29. Assignments void, as against creditors. *First*—When preference is given, except in favor of laborers wages of one hundred dollars. *Second*—If conditional. *Fourth*—For repugnancy to this act, and a return of assignment, by Assignor, may be compelled by attachment.

SEC. 30. If previous fraudulent conveyances have been made, Assignee may proceed by action to have them set aside.

SEC. 31. Judge may cite Assignee to account, and compel obedience; and on application, remove him.

SEC. 34. The Court may put the Assignor upon examination, on oath; and compel completion of assignment, and delivery of property; and may also direct proceedings in guarnishment when necessary.

SEC. 38. Assignee may maintain suits in his own name, and do any other necessary thing.

SEC. 42. Sales made thirty days before an adjournment, in contemplation of insolvency, or to impair, or delay proceedings under this act, shall be void, and assignee may recover the property; and if not made in ordinary way, the fact is *prima facie* evidence of fraud.

SEC. 43. Assignee has same recourse, in cases of pledge, assignment or transfer to preferred persons.

SEC. 45. Every person who, in contemplation of making an assignment for the benefit of creditors, shall, *First.* Secrete or conceal any property belonging to his estate; or, *Second.* Part with, conceal, destroy, alter, mutilate, or falsify, or cause to be so concealed, destroyed, altered, mutilated or falsified, any book, deed, document, or writing relating to his estate or property; or, *Third.* Remove, or cause to be removed, any such property, or book, deed, writing, or document out of the county, or otherwise dispose of any part thereof with intent to prevent its coming into the possession of the sheriff or assignee, or to hinder, impede, or delay them, or either of them, in removing or receiving the same; or, *Fourth.* Make any payment, gift, sale, assignment, transfer or conveyance of any property belonging to his estate with like intent; or *Fifth.* Spend any property belonging to his estate, in gaming; or, *Sixth.* Wilfully and fraudulently, with intent to defraud, conceal from his assignee, or omit from his inventory, any property or effects; or, *Seventh.* Having reason to suspect that any other person has presented a false or ficticious demand against his estate, shall fail to disclose the same to his assignee within one month after coming to his knowledge or belief; or *Eighth.* Fraudulently attempt to account for any of his property by fictitious losses or expenses; or, *Ninth.* Within three months, next before the assignment, for the benefit of creditors, under the false color and pretense of carrying on business and dealing in the ordinary course of trade, obtain on credit from any person any goods or chattels with intent to defraud such person; or, *Tenth.* Within three months next before the assignment for the benefit of creditors with intent to defraud his creditors, pawn, pledge, or dispose of, otherwise than by transactions made in good faith in the ordinary way of his trade, any of his goods, chattels, or property, which have been obtained on credit and remain unpaid for, shall be deemed guilty of a fraudulent evasion of this act, and upon conviction thereof shall be punished by imprisonment in the penitentiary for not more than seven years.

CHAPTER VII.

ATTORNEYS.

SECTION 1. Supreme and District Courts will admit Attorneys, of good moral character, who have studied two years in the office of a practicing Attorney, and passed an examination; or practicing Attorneys of the courts of record of other States, SEC. 5. It is their duty: *First*, To respect the courts and judicial officers; *second*, to counsel and maintain proceedings that appear legal and just, only: *third*, to employ such means only as are truthful; *fourth*, to preserve the confided secrets of clients; *fifth*, to abstain from offensive practices; *sixth*, to aid no proceeding from passion or interest, and may be disbarred for deceit or collusion, to deceive court or Judge, and forfeits treble damages.

SEC. 7. He may: *First*, Execute bonds in appeal, or any other paper necessary in a cause; *second*, to make agreements within the scope of his authority, in writing; to receive his client's money; and to discharge claims, after payment thereof, and has a lien for his fees.

SEC. 11. Judges, Sheriffs, Clerks, Constables, and Jailors, are prohibited from practice; but County Judges and Justices are restricted only in matters pending before themselves.

SEC. 13. He shall endorse his name on all original papers filed.

SEC. 14. Shall appear as guardian of infants, on the order of court.

CHAPTER X.

BONDS AND OATHS.

SECTION 1. District, county, township, precinct and municipal officers shall take an official oath; and give bonds, joint and several with sureties, conditioned as required by the law creating the office; and, with official oath endorsed be filed; under general election on first Thursday after first Tuesday in January; or within thirty days after appointment; or within thirty days after canvass of general election; the county, township and precinct bonds to be approved by County Board, but of the Commissioners and Supervisors, by the County Judge; of Notary Publics, by County Clerk; all to be filed and recorded by County Clerk, except his and those of County Board, which shall be filed by County Judge; each bond to have two sureties who are freeholders of the county.

SEC. 14. No state or county officer, or their deputies, shall be taken as security on the bond of any administrator, executor, or other officer, from whom by law bond is or may be required, and no practicing attorney shall be taken as surety on any official bond, or bond in any legal proceedings in the district in which he may reside.

SEC. 15. Failure to have bond approved and filed for record within time, vacates the office, absolutely; and on re-election, the new bond shall not be approved until he fully settles; no person to be taken as surety for more than two terms.

SEC. 21. County Board may require County Treasurer to give additional bond, and on failure, remove him from office; and the provisions of this chapter shall apply to administrators, receivers, and guardians.

CHAPTER XII.

CHATTEL MORTGAGES.

SECTION 1. Chattel mortgages, with power to sell, must be foreclosed, by newspaper advertisement of sale, within the county, twenty days before sale, or five written notices, where there is no county paper; specifying; *First*, date of mortgage and where recorded; *second*, names of mortgagor, mortgagee, and assignee; *third*, amount claimed; *fourth*, description; *fifth*, time and place of sale. Sale may be postponed by continued notice. Sale to be public between 10 A. M. and 4 P. M., in the county where recorded.

SEC. 9. That any person who after having conveyed any article of personal property to another by mortgage, shall during the existence of the lien or title created by such mortgage, sell, transfer, or in any manner dispose of the said personal property, or any part thereof, so mortgaged, to any persons or body corporate, without first procuring the consent of the mortgagee of the property, to such sale, transfer or disposal, **** shall be deemed guilty of a felony, and on conviction thereof shall be imprisoned in the penitentiary for a term not exceeding ten years, and be fined in a sum not exceeding one thousand dollars.

SEC. 10. Removal of the mortgaged property from the county, with intent to defraud, is felony, punishable by imprisonment not exceeding ten years, and fine, not more than one thousand dollars. (But see session laws.)

CHAPTER XIV *a*.

CIVIL RIGHTS.

SECTION 1. All persons within this State shall be entitled to the full and equal enjoyment of the accommodations, advantages, facilities, and privileges of inns, public conveyances, barber shops, theatres, and other places of amusements; subject only to the conditions and limitations established by law, and applicable alike to every person.

SEC. 2. Any person who shall violate the foregoing section by denying to any person, except for reasons by law applicable to all persons, the full enjoyment of any of the accommodations, advantages, facilities, or privileges enumerated in said section, or by aiding or inciting such denials, shall for each offense be deemed guilty of a misdemeanor, and be fined in any sum not less than twenty-five dollars ($25.00), and not more than two hundred dollars, ($200.00,) and pay costs of the prosecution, and in default or refusal to pay the fine and costs, be imprisoned in the county jail until such fine and costs are paid.

CHAPTER XV.

COMMON LAW.

SECTION 1. So much of the common law of England, as is applicable and not inconsistent with the Constitution of the United States, with the organic law of this Territory, or with any law passed or to be passed by the Legislature of this Territory is adopted, and declared to be law within said Territory.

CHAPTER XIV.

CITIES OF SECOND CLASS AND VILLAGES.

SECTION 1. Towns of one thousand and less than twenty-five thousand inhabitants are cities of second class.

SEC. 2. To be divided into two or more wards.

SEC. 3. Council to number not less than two, or more than twelve, citizens, voters and tax payers.

SEC. 4. Two councilmen to each ward, to be elected, for two years, and reside in the ward. At first election the highest vote determines the long term.

SEC. 5. Regular meetings fixed by ordinance.

SEC. 6. A Mayor, Clerk, Treasurer and City Engineer to be elected annually—and a Police Judge biennially. Mayor and Council may appoint City Attorney and Overseer of Streets. Also Policemen.

SEC. 7. Salaries to be fixed by ordinance.

SEC. 8. Police Judge receives the fees of Justice of the Peace.

SEC. 9. All officers to be citizen tax payers.

SEC. 10. Mayor has casting vote.

SEC. 11. Mayor has the veto power, to be overcome by two-thirds vote.

SEC. 12. Shall communicate with Council by message.

SEC. 13. Mayor or three Councilmen may call special meetings.

SEC. 14. Mayor may require officers to report.

SEC. 15. For health and quarantine, Mayor's jurisdiction extends five miles from city limits—on other matters, except taxation, half a mile from city limits.

SEC. 16. President of Council *ad interum*, to act as Mayor in his absence or disability.

SEC. 17 and 18. Mayor may call out *posse*—and grant reprieves and pardons.

SEC. 19. Policemen may arrest and detain offenders, same as sheriff or constables.

SEC. 20. Before contracts for improvements are let, City Engineer must make estimates—and advertisement must state amount, which cannot be exceeded by contract.

SEC. 21. Street Overseer subjected to order of Mayor or Council.

SEC. 22. Jurisdiction of Police Judge, exclusive under ordinances, and concurrent with Justices under State law.

SEC. 23. Process same as Justice, and fines under ordinances paid to City Treasurer, and under State law, to county.

SEC. 26. Police Judge may take bonds for appearance, which, on forfeiture, shall be certified to District Court.

SEC. 28. To summon witnesses, and enforce their attendance—witness fees, fifty cents per day.

SEC. 29. Trials under ordinances to be had by the Judge alone—under State law, defendant may demand a jury of six men or less, whose fees shall be those of a Justice Court.

SEC. 30. On judgments of guilty, defendant to stand convicted until complied with—*Provided*, defendant and securities may confess judgment for amount and costs, to be collected after ninety days.

SEC. 31. On sentence of imprisonment, defendant shall work out sentence at one dollar and fifty cents per day.

SEC. 32. In misdemeanors, under State law, defendant may be discharged if convicted by District Court.

SEC. 34. On continuances, verbal notice of the time of trial, may be given to witnesses by the Judge.

SEC. 35. Judge a conservator of the peace, and his court open the year around—and shall allow appeals.

SEC. 37. In Judge's absence or disability the Mayor may designate a Justice to act in his place.

SEC. 38. May punish contempt, same as District Court.

SEC. 39, Council may enact ordinances on the following special subjects: Taxes for general purposes, not exceeding one per cent.—disorderly houses—contagious diseases—hospitals—health—water—police—lights—markets—public buildings—Sunday—disorderly conduct—places of amusement—dog tax—occupation tax—water works—buildings fire escapes—runners--peddlers—intoxicating liquors—pounds--fire places—explosives—drainage—cruelty to animals—street traffic—fast driving—side walks—railroad crossings and flagmen—drains—funding bonds—to borrow money—fire apparatus—President of the Council.

SEC. 40. Cities may incorporate as villages.

SEC. 56. Elections first Tuesday of April, each year.

SEC. 65. Treasurer to deposit in bank.

SEC. 68. No officer may be interested in any contract of the corporation.

SEC. 104. Plats to be made, acknowledged and recorded.

CHAPTER XVIII.

COUNTIES AND COUNTY OFFICERS.

SEC. 20. Each organized county is a body corporate and politic, and as such may prosecute and defend suits; and its powers are exercised by a County Board, as follows: If under township organization, the Board is composed of the Town Supervisors. If not, by the County Commissioners.

SEC. 22. Each county shall have power: *First.* To purchase and hold the real and personal estate necessary for the use of the county, and to purchase and hold, for the benefit of the county, real estate sold by virtue of judicial proceedings in which the county is plaintiff, or is interested. *Second.* To sell and convey, or lease, any real or personal estate owned by the county. *Third.* To make all contracts and to do all other acts in relation to the property and concerns of the county, necessary to the exercise of its corporate powers.

SEC. 23. The County Boards of the several counties shall have power: *First.* To take and have the care and custody of all the real and personal estate owned by the county. *Second.* To manage the county funds and county business, except as otherwise specially provided. *Third.* To make all orders respecting the property of the county, to keep the county buildings insured, to sell the public grounds or buildings of the county and purchase other property in lieu thereof: *Provided,* That said County Boards may if they deem it for the best interests of the county to sell county property upon such terms of credit as shall by resolution of said County Boards be determined upon; *Provided, further,* That such deferred payments shall be for not more than two-thirds of the purchase price, the same to be secured by note or notes, and a first mortgage upon the property so sold, said deferred payments to draw not less than six (6) per cent. interest per annum from date until paid, said interest to be paid annually. Said County Boards shall also have the power to sell or negotiate, without recourse upon the county, said notes and mortgage so by them taken, provided the same shall not be sold for less than par value including accrued interest. *Fourth.* To lay out, alter, or discontinue any road running through their county, and perform such duties concerning roads as may be prescribed by law. *Fifth.* To examine and settle all accounts against the county, and all accounts concerning the receipts and expenditures of the county. *Sixth.* To authorize the vacation of any city or village plat when the same is not within any incorporated city or village, on the petition of two-thirds of the owners thereof. *Seventh.* To change the name of any city or village plat on the petition of a majority of the legal voters residing therein, when the inhabitants thereof have not become a body corporate.

SEC. 25. It shall be the duty of the County Board of each county:

First. To cause to be annually levied and collected taxes authorized by law for county purposes, not exceeding one dollar and fifty cents on the one hundred dollars valuation, unless authorized by a vote of the people of the county, and in addition thereto sufficient to pay the interest, and create a sinking fund for the payment of the principal, of all indebtedness which existed at the adoption of the Constitution, November 1, 1875.

Second. To erect or otherwise provide, when necessary, and the finances of the county will justify it, and keep in repair, a suitable court house, jail, and other necessary county buildings, and to provide suitable rooms and offices for the accommodation of the several courts of record, the County Board, Clerk, Treasurer, Sheriff, Clerk of the District Court, County Superintendent and County Attorney, and to provide suitable furniture therefor. But no appropriation exceeding fifteen hundred dollars shall be made for the erection of any county building, without first submitting the proposition to a vote of the people of the county at a general election, and the same is ordered by two-thirds of the legal voters voting thereon.

Third. To provide and keep in repair, when the finances of the county will permit, suitable fire-proof safes for the County Clerk and County Treasurer.

Fourth. To provide suitable books and stationery for the use of the County Board, County Clerk, County Treasurer, County Judge, Sheriff, Clerk of the District Court, County Superintendent and County Attorney.

Fifth. To cause to be published at the close of each annual, regular or special meeting of the Board, brief statement of the proceedings thereof in one newspaper of general circulation published in the county, and also their proceedings upon the equalization of the assessment roll: *Provided*, That no publication in a newspaper shall be required unless the same can be done at an expense not exceeding one-third of the legal rate for advertising notices.

Sixth. At their regular meeting in January of each year, to prepare an estimate of the necessary expenses of the county during the ensuing year, the total of which shall in no instance exceed the amount of taxes authorized by law to be levied during that year, including the amounts necessary to meet outstanding indebtedness as evidenced by bonds, coupons or warrants legally issued; and such estimate containing the items constituting the amounts shall be entered at large upon their records and published four successive weeks before the levy for that year, in some newspaper published and of general circulation in the county, or if none is published, then in some newspaper of general circulation therein, and no levy of taxes shall be made for any other purpose or amounts than are specified in such estimate as published, but any item or amount may be stricken from such estimate, or reduced, at the time the levy is made. If any levy shall be made in excess of such estimate, the tax shall not therefore be void, but the members of the County Board and their sureties shall be jointly and severally liable upon their official bonds for the full amount of such excess, which shall be collected by civil action as in other cases, for the use of the school fund of the county. If the members of said Board neglect to comply with any other provisions of this section the tax shall not therefore be void, but they shall each be liable to a penalty of five hundred dollars, to be recovered by civil action as in other cases, for the use of the school fund of the county.

SEC. 33. For claims against the county, the Clerk shall, by direction of the County Board, draw warrants on the County Treasurer, not to exceed eighty-five per cent. of county levy; and County Board shall not issue any certificate of indebtedness exceeding the yearly levy.

SEC. 35. Each warrant shall specify the amount levied, and already expended, of the fund drawn on, and after seventy-five per cent. is reached, no warrant is a charge on the county, but may be collected off the members of the Board; and claims against the county to be verified on oath. Where claims are rejected, claimants may appeal to the District Court on twenty days' notice to County Clerk, and bond given; and the County Clerk shall thereupon deliver a transcript of the Board's proceedings to the District Clerk; but the Board may, notwithstanding the appeal, once reconsider the matter, on notice to the parties.

SEC. 42. Field notes of original surveys to be procured, and maps constructed therefrom, not less than one inch to the mile, to be kept by County Clerk.

SEC. 44. County Board to collect all money coming to the county; and procure and use a seal; and may offset delinquent personal taxes against any claim of delinquent either before or after action on the claim.

SEC. 51. No county officer may furnish any supplies, or be interested in any county contract; under penalty of imprisonment and fine.

SEC. 53. The Board of County Commissioners shall consist of three electors, to be elected in their respective districts at the general election, for a two-year term; at first election, the person receiving the highest vote holds the long term.

SEC. 56. Board of Commissioners shall hold sessions at county seat, second Tuesday in January, third Monday in June, and first Tuesday in October, and may hold special sessions: and chairman shall sign all warrants.

COUNTY SUPERVISORS.

In counties having township organizations, the County Board of Supervisors, shall consist of the Township Supervisors, and those from the cities and villages; and shall hold two regular meetings each year, second Tuesday in January and first Tuesday in June; and special meetings on request of one-third of the members.

SEC. 67. In addition to the powers hereinbefore conferred upon all County Boards, the Board of Supervisors shall have power to appropriate funds to aid in the construction of roads and bridges not exceeding two mills of the levy for the current year for general purposes, except by a vote of the people authorizing them to expend a greater amount; to change the boundaries of towns, and to create new towns as provided by law, to designate and give names thereto, and to fix the place of holding the first town meeting therein; and to change the name of any town upon the petition of a majority of the voters of said town.

SEC. 71. In order to insure uniformity in the keeping of town records and other matters pertaining to the duties of town officers, it shall be the duty of the Board of Supervisors to purchase for the use of the respective towns suitable books and blanks thereof, the cost in the first instance to be paid by warrant upon the County Treasury, and the amount to be charged to the respective towns, and levied and collected with other town taxes.

COUNTY CLERK.

SEC. 73. The County Clerk shall keep his office at the county seat; shall attend the sessions of the County Board; keep the seal, records, and papers of said board; and shall sign the record of the proceedings of the Board, and attest the same with the county seal.

SEC. 74. It shall be the general duty of the County Clerk: *First.* To record, in a book provided for that purpose, all proceedings of the Board. *Second.* To make regular entries of their resolution and decisions in all questions concerning the raising of money. *Third.* To countersign all warrants issued by the Board, and signed by its Chairman. *Fourth.* To preserve and file all accounts acted upon by the Board, with their action thereon; and he shall perform such special duties as are required of him by law.

SEC. 75. Such Clerk shall not issue any county warrants unless ordered by the Board of Commissioners authorizing the same; and every such warrant shall be numbered consecutively as allowed from the first day of January to the thirty-first day of December in each year, and the date, amount and number of the same and the name of the person to whom it is issued, shall be entered in a book called "Warrant Book," to be kept by the clerk in his office for that purpose. When any warrant is returned as cancelled, the clerk shall note the date of cancellation opposite such entry.

SEC. 76. The County Clerk shall keep a book, in which shall be entered in alphabetical order, by name of the principal, a minute of all official bonds filed in his office, giving the name of the office, amount and date of bond, names of sureties and date of filing, with proper reference to the book and page where the same is recorded.

SEC. 77. It shall be the duty of the County Clerk to record in a proper book; to be called the "Road Record," a record of the proceedings in regard to laying out and establishing, changing or discontinuing roads in the country.

REGISTER OF DEEDS.

SEC. 77*c*. In counties of less than 18,000 the County Clerk is *ex-officio* Register of Deeds, and shall keep an index in the following form:

Grantor.	Grantee.	Character of Instrument.	Where Recorded		Date of Delivery.			Receipt of Party to Whom Delivered.
			Book.	Page.	Month.	Day.	Year.	

And shall keep a seal; may take acknowledgments and administer oaths, and appoint a deputy, with consent of County Board, and record all instruments authorized to be recorded.

SEC. 79. The Register of Deeds shall keep a grantor and a grantee index of deeds in his office, the pages of each of which shall be divided into eight columns, as follows, to wit:

GRANTOR INDEX.

Grantors.	Grantees.	Date of Filing.	Date of Instrument.	Character of Instrument.	Book.	Page.	Description of Tract.

GRANTEE INDEX.

Grantees.	Grantors.	Date of Filing.	Date of Instrument.	Character of Instrument.	Book.	Page.	Description of Tract.

SEC. 81. Endorsements to be made on instruments recorded; and separate books for deeds and mortgages and mechanics' liens, shall be kept.

SEC. 83. The Register of Deeds shall also keep a separate book to be called the Mechanics' Lien Record, in which all instruments provided by law for securing mechanics' liens shall be recorded. He shall also keep a tax register of mortgages on real estate, in which he shall enter all such mortgages filed for record. Said register shall show the name of the mortgagor, the name of the mortgagee, description of the real estate mortgaged, and the time when the debt secured by the mortgagee becomes due. It shall also contain a column in which shall be entered a memoranda of the discharge of such mortgage or any part thereof at the time the same is released.

SEC. 84. The Register of Deeds shall keep a numerical index as nearly as practicable in the following form to wit:

	NUMERICAL INDEX.		... .County, [Oklahoma Territory.]																			
	Section............		Township								Range.											
			N.E ¼				N.W. ¼				S.W. ¼				S.E. ¼							
Grantee.	Grantor.	Kind of Instrument.																	Acres.	Book.	Page.	Remarks.

SEC. 87. Shall keep a "miscellaneous" record.

COUNTY TREASURER.

SEC. 91. The County Treasurer shall pay out county money only on warrants issued by the County Board, according to law; when not in funds, he shall endorse the warrants "not paid for want of funds," and sign his name thereto, with date, and they will draw interest at seven per cent; and may be removed from office by the County Board, on failure to pay; and give duplicate receipts for all money received, to be placed with County Clerk, who shall countersign, and retain one in his office; and shall semi-annually, in January and June, make newspaper publication of receipts and expenditures, showing: *First*, Amount received; *second*, warrants registered; *third*, amount paid, and from what fund; *fourth*, amount of each fund on hand; outstanding warrants; *sixth*, total amount on hand.

CORONER.

SEC. 97. The Coroner shall hold an inquest only on dead bodies from supposed unlawful means, by six lawful men, sworn to diligently inquire and true presentment make, each to be fined twenty dollars by any justice, for failure to attend, a misbehavior; and may recognize witness to appear at court; and may cause arrest of accused person, for examination before a Justice; his warrant of arrest shall recite the verdict of his jury; and make return with names of witnesses to District Court; and shall take charge of property found on deceased, and on ten days notice, if unclaimed, sell the same, and pay proceeds, less funeral expenses and fees, to County Treasurer; and deliver dead body to friends, or decently bury same; and on request of jury, issue warrant for suspected person.

SHERIFF AND CONSTABLES.

SEC. 118. The Sheriff shall have custody of the jail and prisoners therein;

shall be a conservator of the peace; make arrests of offenders, and may call the *posse* of the county; and shall attend sessions of the County Court, when required.

SEC. 123. His deputies may execute process on hand if a vacancy occurs; and shall deliver papers, property and prisoners to successors; may appoint special deputies, by endorsement on process.

SURVEYOR.

SEC. 128. The County Surveyor shall record, in a book provided by the County Board, all surveys made by him, within twenty days; and deliver said book to his successor; said record shall show mitre and bounds, and names and oath of chainmen; who shall be disinterested persons, and be employed by parties causing the survey, and be sworn; and shall establish monuments at each corner made.

PLATS.

SEC. 142. Irregular tracts of subdivided lands shall be platted, scale of ten inches to the mile, on duplicate maps, tracts to be consecutively numbered, and hung in office of County Clerk, and County Board shall enter in duplicate, the field notes of such tracts, one copy with County Clerk, and the other with County Treasurer.

ARTICLE 2.—REMOVAL FROM OFFICE.

SECTION 1. All county officers, including Justices of the Peace, may be charged, tried, and removed from office for official misdemeanors in the manner and for the causes following: *First.* For habitual or wilful neglect of duty. *Second.* For gross partiality. *Third.* For oppression. *Fourth.* For extortion. *Fifth.* For corruption. *Sixth.* For wilful mal-administration in office. *Seventh.* For conviction of a felony. *Eighth.* For habitual drunkenness.

SEC. 2. Any person may make such charge, and the Board of Commissioners shall have exclusive original jurisdiction thereof by a summons.

SEC. 3. The proceeding shall be as nearly like those in other actions as the nature of the case admits, excepting where otherwise provided in this chapter.

SEC. 4. The complaint shall be by an accuser against the accused, and shall contain the charges with the necessary specifications under them, and be verified by the affidavit of any elector of the State that he believes the charges to be true.

ARTICLE 3.—MISCELLANEOUS.

SEC. 3. That the Board of County Commissioners of the several counties in this State are hereby authorized to audit and allow the fees that may be fixed by law for services that may hereafter be performed by Justices of the Peace, Constables and Sheriffs in their respective counties, in the arrest and examination of offenders charged with felony or misdemeanor.

SEC. 16. When Sheriff is disqualified, or a party, Coroner may serve procsss.

ARTICLE 4.—TOWNSHIP ORGANIZATION.

SECTION 1. Electors may vote, at any general election, for township organization in the county.

SEC. 2. County Commissioners to submit the question. Each voting precinct to be a temporary township, and to elect a Supervisor, Clerk, Treasurer, one Assessor, three Judges and two Clerks of Election, and an Overseer of Highways for each road district.

SEC. 5. On the fifteenth day after election, if the vote is in the affirmative, the new County Board shall hold a meeting, and supercede the County Commissioners, as County Government.

SECS. 6 and 7. County Board to name towns and Clerk to record boundaries.

SEC. 8. County Clerk to designate place of holding first town meeting, which shall be held first Tuesday of April.

SEC. 11. Actions by or against town to be in its corporate name; and may acquire property and make contracts as such.

SEC. 13. The electors present at the annual town meeting shall have power: *First.* To make all orders for the sale, conveyance, regulation, or use of the corporate property of the town that may be deemed to be conducive to the interests of its inhabitants. *Second.* To take all necessary measures and give directions for the exercise of their corporate powers. *Third.* To provide for the institution, defence, or disposition of suits at law or in equity in which the town is interested. *Fourth.* To take such action as shall induce the planting and cultivation of trees along the highways in such towns, and to protect and preserve trees standing along or on highways. *Fifth.* To construct and keep in repair public wells, and to regulate the use thereof. *Sixth.* To prevent the exposure or deposit of offensive or injurious substances within the limits of the town. *Seventh.* To make such by-laws, rules, and regulations as may be deemed necessary to carry into effect the powers herein granted, and to impose such fines and penalties, not exceeding twenty dollars for one offense, as shall be deemed proper, except when a fine or penalty is already allowed by law, such fine or penalty to be imposed by any Justice of the Peace of the town where the offense is committed. *Eighth.* To direct the raising of money by taxation for the following purposes: 1st. For constructing or repairing roads and bridges within the town to the extent allowed by law. 2d. For the prosecution or defense of suits by or against the town, or in which it is interested. 3d. For any other purpose required by law. 4th. For the purpose of building or repairing bridges over streams dividing said town from any other town. 5th. For the support of the poor within the town: *Provided,* That when the County Board of any county shall have established a poor-house under any statute law of the State, the support of the poor shall be provided for by the County Board, and no taxes for that purpose shall be voted by the electors at town meetings except sufficient to provide temporary relief. 6th. For the compensation of town officers at the rate allowed by law, and, when no rate is fixed, for such amount as the electors may direct. *Ninth.* To guard against the destruction of property in said town by prairie fire. *Tenth.* To restrain, regulate, or prohibit the running at large of cattle, horses, mules, asses, swine, sheep, and goats, and determine when such animals may go at large, if at all: *Provided,* That all votes thereupon shall be by ballot. *Eleventh.* To authorize the distraining, impounding, and sale of cattle, horses, mules, asses, sheep, goats, and swine, for penalties incurred and costs of proceedings: *Provided,* That the owner of such animals shall have the right to redeem the same from the purchaser thereof at any time within one month from the day of sale, by paying the amount of the purchaser's bid, with reasonable cost for their keeping, and interest at the rate of seven per cent per annum.

SEC. 15. Town officers failing to qualify, the County Board may annex the defaulting town to any adjoining town.

SEC. 17. The electors of each town shall have power at their annual town meetings to elect such town officers as may be required to be chosen to direct the institution and defense of suits at law or in equity in which such town may be a party in interest; to direct such sum to be raised in such town for the support and maintenance of roads and bridges, or for any other purpose provided by law, as they may deem necessary; to take measures and give directions for the exercise of their corporate powers; to impose penalties upon persons offending against any such regulations; and to make rules, regulations, and by-laws necessary to carry into effect the powers herein granted.

SEC. 18. Town Clerk to post or publish by-laws.

SEC. 19. Twelve freeholders, and Supervisor and Clerk, may call special town meeting, for specified purposes.

SEC, 29. Town meeting to remain open until 6 P. M., and minutes of proceedings, signed, shall be filed with Town Clerk within two days.

SEC. 31. Oaths of office to be filed in ten days, on failure, the office vacant; term of office one year.

SEC. 35. Treasurer to give bond in $5,000.

SEC. 37. Town Supervisor to attend meetings of County Board, and deliver papers from Clerk in respect to money to be raised; and keep correct accounts thereof, and render same on the Tuesday preceeding annual town meeting; and a wilfull refusal forfeits fifty dollars.

SEC. 42. Assistant Supervisors, elected in second-class cities, shall be members of County Boards.

SEC. 43. Town Clerk to keep records of all proceedings—to give transcripts, and may administer oaths; and his transcripts to be evidence.

SEC. 47. Supervisor, Clerk and Justices, to be Township Board—and if any one being absent, Assessor to fill his place.

SEC. 48. Regular meetings of Town Board on Tuesday preceeding annual town meeting—on Tuesday preceeding each regular meeting of County Board, and when interest of town require.

SEC. 50. Orders on Township Treasurer shall be signed by Clerk and Supervisor and if not paid on presentation shall be endorsed by Treasurer, and draw seven per cent. interest. And all accounts presented shall be sworn to.

SEC. 54, The moneys necessary to defray the town charges of each town shall be levied on the taxable property in such town, in the manner prescribed by law for raising revenue. The rate of taxes for town purposes shall not exceed, for roads, two mills on each dollar of the valuation; for bridges, two mills on each dollar of the valuation; for all other purposes, three mills on each dollar of the valuation. And if the electors at the annual town meeting fail to vote a tax to pay the town charges hereinbefore specified, or the Town Board fail to certify up to the County Board the amount of tax voted, if any, by a town meeting, then the County Board shall have power, and it shall be the duty of such County Board, to levy upon the taxable property in said town a tax sufficient to pay all such town charges.

SEC. 55. The following town officers shall be entitled to compensation as hereinafter specified: Town Treasurer, three per centum on the amount collected by him as taxes, excepting on school taxes, on which taxes he shall receive one per centum; the Town Clerk and Supervisor shall each receive two dollars per day for each day actually and necessarily employed in attending to the duties of their respective offices: *Provided*, That the Town Clerk shall receive fees for the following services, and not a *per diem*: For serving notices of election, as required by law, twenty-five (25) cents each; filing papers, ten (10) cents each; posting notices, as required by law, twenty-five (25) cents each; for recording any order or instrument of writing authorized by law, five cents for each one hundred words; for copying any record in his office and certifying the same, ten cents for each one hundred words, to be paid by the person applying for the same; and, for copying by-laws for posting or publication, five cents for each one hundred words.

SEC. 56. The members of the Town Board shall be entitled to two dollars per day each, for their services while actually engaged in their duties as such Board.

SEC. 61. The Board of Supervisors shall meet at such times as may be provided by law, and each member thereof shall be allowed, when actually employed, the sum of two dollars per day, and mileage at the rate of five cents per mile for each mile necessarily traveled, and no more, as compensation for his services and expenses in attending the meetings of the Board or any other business for the benefit of the county: *Provided*, That the salary of any member of said Board shall in no case exceed seventy-five dollars per annum.

SEC. 62. None of the provisions of this act in regard to meeting of electors of their respective towns and their powers shall apply to towns whose limits are co-extensive with cities of the first and second class, but such cities and the inhabitants thereof shall continue to be governed by the laws specially applicable thereto, with such power only as conferred by law or election in the choosing of Supervisors, Assessors, Judges and Clerks of Election, and other county officers.

CHAPTER XX.

PROBATE COURT.

SECTION 1. There shall be a Probate Court in each county, always open at the county seat.

SEC. 2. County Judges in their respective counties shall have and exercise the ordinary powers and jurisdiction of a Justice of the Peace, and shall, in civil cases, have concurrent jurisdiction with the District Court, in all civil cases in any sum not exceeding one thousand dollars, exclusive of costs, and in actions of replevin where the appraised value of the property does not exceed that sum, and the provisions of the Code of Civil Procedure, relative to Justices of the Peace, shall, where no specified provision is made by this subdivision, apply to the proceedings in all civil actions prosecuted before said County Court: *Provided*, That County Courts shall not have jurisdiction: *First*. In any action for malicious prosecution. *Second*. In any action against officers for misconduct in office, except where like proceedings can be had before Justices of the Peace. *Third*. In actions for slander and libel. *Fourth*. In actions upon contracts for the sale of real estate. *Fifth*. In any matter wherein the title or boundaries of land may be in dispute, nor to order or decree the sale or partition of real estate.

SEC. 3. The courts of probate, in their respective counties, shall have exclusive jurisdiction of the probate of wills, the administration of estates of deceased persons, and the guardianship of minors, insane persons, and idiots: *Provided*, No Judge of probate shall act in any case or matter where he is next of kin to the deceased, nor where he is legatee or devisee under a will, nor where he is named as executor or trustee in a will, or is one of the subscribing witnesses thereto, nor where he is related to any party in interest, in any case before him, by consanguinity or affinity, or has such an interest therein as would exclude him from acting as a juror in such case or matter, nor where he has acted as attorney or counsel in any case or matter before him.

SEC. 4. They shall have power: *First.* To hear and determine claims and set-offs in the matter of estates of deceased persons. *Second.* To hear and determine questions of application for, and to grant and issue letters of administration, testamentary, and of guardianship, and revoke the same. *Third.* To take the probate of wills. *Fourth.* To cause to be taken, to receive, file and record all inventories, sale, and appraisement bills of the estates of deceased persons. *Fifth.* To require executors, administrators, and guardians to exhibit and settle their accounts, and account for the estates and property that have come into their possession as such. *Sixth.* To appoint commissioners to partition personal estate. *Seventh.* To authorize guardians to sell and convey or mortgage the personal estate of their wards, to provide for their wants, education and support.

SEC. 5. May order administrators and guardians to give additional bonds; and shall hold a regular term on the first Monday of each month.

SEC. 8. In original causes above jurisdiction of a Justice, if summons has not been returned ten days before the term, the cause shall stand continued.

SEC. 9. If in replevin, the appraisal exceeds the court's jurisdiction, the case shall be certified to the District Court; and in cases where the claim exceeds a Justices jurisdiction, the pleadings shall be in writing as in District Court; and on written demand, either party may have a jury, to be selected as before a justice.

SEC. 15. At each term the Judge shall have a trial calendar, and assign causes thereon for trial as in the District Court; and orders for arrest and attachment may issue as in District Court; and stay of execution after judgment is allowed as in District Court and before Justices, dividing on two hundred dollars; and transcripts filed with District Clerk shall be a lien, to be enforced by execution.

SEC. 21. Sheriff and Constables failing to serve process, may be proceeded against as before Justices; and service, either personal, or by copy left, or by publication, may be as in the District Court; and appeals and petitions in error are allowed, as from Justices.

SEC. 28. If Judge is not present within one hour after cause is set for trial, it shall stand continued until nine o'clock of the next day, and if the Judge is still absent, the cause is continued to next term; but causes shall not be continued over three terms, without consent.

SEC. 32. The probate books shall consist of a record, entry, estate and fee book, which shall be kept as follows: *First.* The record book shall contain a full record of all wills, testaments and codicils, and the probate thereof, all letters testamentary, of administration and guardianship, and all bonds of executors, guardians and administrators. The original papers shall be filed and preserved in the office. *Second.* There shall be entered in the estate book all inventories, appraisements, sale bills, and other exhibits and reports received by the court, relative to the settlement or disposition of estates, showing the amount of all such estates, as shown by such instruments. *Third.* The entry book shall contain a fair statement of all the matters, controversies and suits that may have arisen for decision and adjudication before said court, with the names of the parties, dates of each entry, and the judgment or opinion of the court, and all orders thereof, and a full record of all determinations of the District or Supreme Court upon appeal or petition in error in such matters, controversies and suits. *Fourth.* The fee book shall contain an exact account of all fees allowed and paid in each case, showing the names of the persons receiving the same, and for what such fees were paid.

SEC. 35. Where Judge is disqualified or absent, County Board may appoint a Judge *pro tem.*

SEC. 42. Appeals are allowed in probate matters, to be taken thirty days after decision. Appeal bond to be given except by Administrators and Guardians; and if appeal is adjudged vexatious, appellant shall pay costs, including Attorney's fee; transcript in appeal to be filed within ten days; and judgment of Appellate Court shall be certified back for execution.

SALES BY GUARDIAN.

SEC. 42. A ward's land may be sold for his support, or for investment, on interest; and any surplus is treated as real estate, and goes to heirs; on petition to District Court, where next of kin are to be cited to appear within eight weeks, as defendants; and no sale allowed except for minors, unless County Commissioners approve thereof in writing; and before sale guardian shall give bond to account for proceeds; notice of sale as in other cases; and license continues only one year; applies to foreign guardians.

SEC. 63. Actions to recover property so sold limited to five years; and the sale to be held valid if shown—*First*, That license was granted; *second*, that an approved bond was given; *third*, that oath was administered; *fourth*, that notice was given; *fifth*, that a purchase was made in good faith at public auction; and damages may be recovered on the bond, resulting from any misconduct.

LAND SALES BY ADMINISTRATORS.

SEC. 68. District Court to grant license to sell any interest in lands, on petition and six weeks' notice; and when more than necessary to pay debts is to be sold, bond shall be given to account for proceeds; persons interested may give bond, and prevent sale; the sale may include reversion on dower estate; notice of sale by newspaper and posting in three most public places in county; sale held open one hour between 9 A. M. and sundown; and may be on three years' time, with mortgage security; sale to be confirmed by court.

SEC. 95. Sale of equities to be subject to payments not yet due; and bond given by purchaser to pay; foreign executor may file authenticated copy of appointment, and make sale; and on filing foreign bond; but if licensed, to sell more than is necessary, shall give additional bond; and executor making fraudulent sale, or contrary to foregoing provisions, is liable to pay double damages to heirs.

WILLS.

SEC. 123. Persons of full age and sound mind, including married women, may make last will, including noncupative will; to be in writing, signed and witnessed by two witnesses in testator's presence; noncupative wills must have three witnesses, and after six months cannot be proven unless reduced to writing within six days after testamentary words were used; and all devises to subscribing witness void, unless proven by two other witnesses.

SEC. 133. Sealed wills may be deposited with Probate Judge; and unless returned to testator, shall be publicly opened at first term after the death, on notice to interested parties; and shall be probated within thirty days; and negligence in respect thereto, is a misdemeanor; and offender may be committed until compliance.

SEC. 140. Three weeks' newspaper notice shall be given of time and place of probate; and no will valid without probate as above; and foreign wills, duly authenticated, are to be filed and recorded.

SEC. 148. Posthumous children to share; also children omitted by mistake or accident; devises subject to payment of debts; and contribution may be decreed; and copy of will devising lands must be recorded in deed record.

LETTERS TESTAMENTARY.

To be issued by Probate Court; and bond given by executor, as the court may direct, conditioned to return inventory within three months; to administer according to the will and law; to pay debts and legacies; to render true account within one year; and to obey court's orders; but a residuary legatee's bond is conditioned only to pay debts.

SEC. 167. Executor declining, administration with will annexed will be granted in regular order; and marriage of a sole executrix extinguishes her authority; and disqualified or absent executors may be removed.

CHAPTER XXIII.

DECENDENTS.

[The first thirty sections of this chapter—and also section one hundred and seventy-six—were repealed, by the Session Laws of 1889, and the following sections enacted in their place:]

SEC. 30. When any person shall die seized of any land, tenements or hereditaments, or of any rights thereto, or entitled to any interest therein in fee simple, or for the life of another, not having lawfully devised the same, they shall descend, subject to his debts, in the manner following:

First. If the intestate leave no issue, one-half shall descend to his widow in absolute title, and one-half to his father and mother.

Second. If the intestate shall leave only one issue, one-half shall descend to his widow in absolute title, and one-half to his issue.

Third. If the intestate leave two or more issue, one-third shall descend to his widow in absolute title, and the residue in equal shares to his children and to the lawful issue of any deceased child by right of representation.

Fourth. If the intestate leave no issue and no father, one-half shall descend to his widow in absolute title, and one-half to his mother.

Fifth. If the intestate leave no issue and no mother, one-half shall descend to his widow in absolute title, and one-half to his father. And in case of the death of both father and mother their distributive share shall descend to the deceaseds' brothers and sisters in equal shares and to their lawful issue by right of representation.

Sixth. If the intestate leave no widow, his estate shall descend to his children in equal shares, and to the lawful issue of any deceased child, by right of representation.

Seventh. If the intestate leave no issue and no widow all his estate shall descend to his parents, and in case of the death of either, then to the surviving parent, and in case of the death of both, in equal shares to his brothers and sisters, and to the lawful issue of any deceased brother or sister by right of representation.

Eighth. If the intestate leave no issue, nor widow, and no father, mother, brother or sister, his estate shall descend to his next of kin in equal degree; excepting when there are two or more collateral kindred in equal degree, but claiming through different ancestors, those who claim through the nearest ancestors shall be preferred. *Provided, however,*

Ninth. If any person shall die leaving several children, or leaving one child, and the issue of one or more other children, and any such surviving child shall die under age and not having been married, all the estate that came to the deceased by inheritance from such deceased parent, shall descend in equal shares, to the other children of the same parent, and to the issue of any such other children, who shall have died, by right of representation.

Tenth. If at the death of such child who shall die under age, and not having been married, all the other children of his said parent shall also be dead, and any of them shall have left issue, the estate that came to said child, by inheritance from his said parent shall descend to all the issue of other children of the same parent; and if all the said issue are in the same degree of kindred to the said child, they shall share the said estate equally; otherwise they shall take according to the right of representation.

Eleventh. If the intestate shall leave a widow and no kindred, his estate shall descend to such widow.

Twelfth. If the intestate shall leave no widow nor kindred, his estate shall escheat to the State of Nebraska; *Provided, further,* That the homestead, if any, left by the intestate shall descend as follows: The homestead shall be appraised by the county treasurer and county clerk and one freeholder, to be appointed by the judge of the county court, all to be residents of the county in which the homestead is situate. The judge of the county court shall, within sixty days after he has been notified in writing by any person of the death of the deceased and that the intestate leaves a homestead, or if the judge of the county court shall ascertain said facts from any other source, shall appoint such appraiser and notify the county treasurer and county clerk and the appraiser appointed by said judge of the county court, in writing, to meet on a day fixed by said judge, within thirty days from the notice to meet at his office. The said appraisers shall then proceed at once to appraise the homestead of the deceased at its cash value, which appraisement shall be made and returned in writing, under oath, by said appraisers, and shall be made a part of the records of said court. In case that any of the said appraisers shall fail to meet, the said court shall appoint other freeholders in their place, who shall proceed and appraise said homestead under this provision, and any vacancy at any time shall be filled in the same way. The judge of the county court shall thereupon deduct from said appraisement the amount of incumbrance, if any, upon said homestead, and if the residue does not exceed the sum of one thousand ($1,000) dollars said homestead shall descend to the widow in absolute title, subject to the incumbrance on the same, if any; in case there is a residue after deducting the amount of incumbrance, if any, and the one thousand dollars, it shall descend as provided in this act. And it is further provided that the widow shall have the option to retain the homestead, subject to the incumbrance if any, by paying such share or shares as descend to other heirs, within six months from her election to retain the homestead, which shall be within sixty days after the return of the appraisal; and in case she does not so elect, the property shall be sold by the said appraisers, at public sale for cash, subject to the incumbrance, if any, after giving notice by publication four consecutive weeks in some newspaper published in said county, which notice shall contain a description of the homestead and the place and terms of sale, which sale shall be conducted in the same manner as a sheriff's sale of real estate on execution. Said appraisers shall make a full return of all their doings in and about the sale, including the notice to sell, under oath, to the county judge, who shall certify all of said papers to the district court of said county, on or before the first day of the next term thereof, and said district court shall confirm or disaffirm said sale, as in cases of sale of real estate by order of said court. And in case the sale is disaffirmed, said court shall order another sale. In case said sale is affirmed, the said district court shall order said appraisers to execute a deed of conveyance to the purchaser, and deliver the same to the clerk of said court, who shall deliver the same, together with a certified copy of the proceedings in said district court, to the judge of the county court and take his receipt for the same. The said county court shall at once notify the purchaser that he holds said deed for delivery to said purchaser, upon the payment of the purchase money for said real estate to said county judge by said purchaser; and in case said purchaser shall fail or neglect to pay said purchase money as above provided within thirty days from and after he has been notified that said county court holds said deed, said purchaser shall pay all the costs of said sale and confirmation, including the expense of an attorney's fee expended in the sale and confirmation of said sale, which can be collected by any one to whom said fees are to be paid or by any one who has paid the same or any part thereof. When said purchase money has been paid to the said judge of the county court as above provided, he shall at once proceed to distribute the same as follows: The first one thousand dollars shall be paid to the widow, the residue as other personal property. Said appraisers shall receive the same fees as jurors, and shall be paid out of the estate. The widow's share cannot be affected by any will of her husband, unless she consents thereto in writing within thirty days after his will has been left with the county judge for probate and she advised of its contents by a certified copy of the will duly served on her by personal service, and her consent as aforesaid filed with the county judge, who shall make it a part of the record.

The same share of the real estate of the deceased wife, as provided in this act, shall be set apart to the surviving husband. All provisions made in this act in regard to a widow of a deceased husband shall be applicable to the surviving husband of a deceased wife. The widow of any deceased person shall be entitled to her distributive share of all the lands whereof the husband was seized, of all estate or inheritance at any time during the marriage, unless she joins in a deed of conveyance with her husband or is otherwise lawfully barred; *Provided, however*, if the wife is insane, she may be barred of her dower and interest in her husband's real estate at any time during the life of her husband by deed of her lawful appointed guardian; *Provided*, That the widower of any deceased person shall be entitled to his distributive share, equal to that received by the widow, of all the lands whereof his wife was seized of all estate of inheritance at any time during the marriage, unless he join in a deed of conveyance with his wife or is otherwise lawfully barred. I he estates of dower and courtesy are hereby abolished.

SEC. 176. When any person shall die possessed of any personal estate or of any right or interest therein not lawfully disposed of by his last will, the same shall be applied and distributed as follows:

First. The widow, if any, shall be allowed all the articles of apparel and ornaments, and all the wearing apparel and ornaments of the deceased, the household furniture of the deceased, and other personal property, to be selected by her, not exceeding in value two hundred dollars; and this allowance shall be made as well when the widow receives the provisions made for her in the will of her husband, as when he dies intestate.

Second. The widow and children constituting the family of the deceased shall have such reasonable allowance out of the personal estate, or out of the income of the real estate as the county court may judge necessary for their maintenance during the progress of the settlement of the estate, according to their circumstances, which in the case of an insolvent estate shall not be longer than one year after granting administration, nor for any time after the personal estate shall be assigned to the widow. And when the personal estate and the income from the real estate shall be insufficient to meet the allowance made, or any other allowance made as provided by law, such an allowance shall be deemed a debt against the estate, to be paid out of the proceeds of the sale of any real estate, and to take its preference for payment next after debts due this estate, and before the claims of general creditors.

Third. When a person shall die leaving children under fourteen years of age, having no mother, or when the mother shall die before the children shall arrive at the age of fourteen years, an allowance shall be made for the necessary maintenance of such children, until they arrive at the age of fourteen years, out of such part of the personal estate and the income of such part of the real estate as would have been assigned to their mother if she had been living.

Fourth. If on the return of the inventory of any estate, it shall appear that the value of the saleable estate does not exceed the sum of two hundred and fifty ($250) dollars, the county court may decree for that purpose, assign for the use and support of the widow and children of such intestate, or for the support of the children under fourteen years of age, if there be no widow, the whole of such estate, after the payment of the funeral charges and the expenses of administration.

Fifth. If the personal estate shall amount to more than two hundred and fifty ($250) dollars, and more than the allowance mentioned in the preceding subdivision of this section, the same shall be applied to the payment of the debts of the deceased, with the charges of his funeral and the settling of his estate.

Sixth. The residue, if any, of the personal estate shall be distributed in the same proportion, to the same persons, as prescribed for the descent and distribution of real estate in this act, except that the intestates leave no homestead, then one thousand (1,000) dollars of the residue referred to in this division, shall be set apart to the widow; and it is further enacted that the widow's share cannot be affected by any will of her husband unless she consents thereto in writing within six months after notice to her of the provisions of the will by parties interested in the estate, which consent shall be entered on the records of the county court; all provisions made in this section in regard to the widow of a deceased husband shall be applicable and shall apply to the surviving husband of a deceased wife.

ADMINISTRATION AND DISTRIBUTION.

SEC. 178. Administration is granted—*First*, To widow or next of kin; *second*, after thirty days to principal creditor, unless some other person has been recommended by relatives; *third*, to court's selection; bond to be given as by executor, above; in case of delay, a special administrator to collect effects: he shall give bond, and his powers cease with regular appointment.

SEC. 185. Persons converting or destroying decedent's effects, before administration granted, may be prosecuted, and on any judgment obtained there shall be no exemption; in cases of death, disqualification, removal or marriage, same provisions as in case of executors, above.

SEC. 195. Personal service or newspaper notice of application for appointment to be given by Probate Judge.

INVENTORY.

SEC. 196. Of real and personal estate, (the latter to be appraised by two disinterested persons,) to be returned within three month; by special administrator within two weeks; the widow's share to be inventoried separately; and not assets; persons suspected may be cited to answer on oath as to effects of decedent; examination to be in writing, and suspect may be committed for contumacy.

SEC. 211. Fraudulent conveyances by decedent may be set aside in behalf of his creditors, provided the latter contribute part of expenses.

PAYMENT OF DEBTS AND LEGACIES.

SEC. 214. Interested parties may require Probate Court to appoint two Commissioners to pass upon claims, who shall, within sixty days, proceed to give four weeks' newspaper notice, and by posting four copies, of time and place of adjustment; and Court may allow creditors eighteen months to present claims; the Commissioners shall be sworn to faithfully discharge their duties; and claims not presented within time limited are forever barred; and no action or execution against estate is allowed until after time named by Court for payment of debts.

SEC. 231. On joint contracts, administrator may pay and compel contribution; the Commissioners shall receive two dollars per day for actual service; and appeal is allowed to District Court, on personal or newspaper notice, ten days before next term.

OF DISTRIBUTION.

SEC. 249. In case of insufficiency, debts will be paid as follows: *First*, expenses of funeral; *second*, expenses of last sickness; *third*, preferred by United States laws; *fourth*, other creditors; and three weeks' newspaper notice shall be given of time limited fot payment; after which Administrator personally liable; and claims not demanded within two years thereafter shall be forever barred.

CONTINGENT CLAIMS.

SEC. 259. Court may order sum retained to pay contingent and security claims; and if made absolute, must be paid within two years after time named for distribution; and heirs and legatees, or their representatives must contribute if they have received shares before such claim become absolute.

SEC. 273. During time given for payments, no action lies against the estate, except in case of existing liens, or where no notice has been given for allowance of claims.

RENDERING ACCOUNTS.

SEC. 277. Probate Court may order personalty to be sold at public or private sale; and Administrator must account for income of real estate in his possession; and is liable for waste if he neglects collections; and must settle and return vouchers within one year unless further time is given; and is allowed necessary expenses, and fees allowed by law, unless the will fixes a different amount; his commissions are five per cent. on first one thousand dollars—two and one-half per cent. on excess up to five thousand dollars, and one per cent. on all above; and for extra services what the Court allow.

PARTITION AND DISTRIBUTION.

SEC. 288. Children under seven are to be provided for, before division of estate, and a sufficient amount retained.

SEC. 290. In final decree, the court shall name the persons and amounts, in respect to distribution ordered; but if any charge on the estate for debts, etc., remains unliquidated, no heir, or devisee, or legatee, will be entitled to his share, until he gives bond to contribute.

PROBATE BONDS.

SEC. 312. If executor refuses to make any payment ordered, creditor or next of kin may sue on the bond; or on the order of the court, in any other case of neglect of duty; in which case a copy of bond shall be furnished.

EXECUTORY CONTRACTS.

SEC. 323. Executory contracts for conveyance of real estate, by decedent, may be executed by administrator, by courts direction, on six weeks' notice to heirs; and the order may be appealed from. Specific performance may also be decreed against administrator, and resident heirs may be joined in the proceeding.

MISCCLLANEOUS.

SEC. 339. District Court Judge may make order to sell real estate, by executors, administrators and guardians, at chambers; *provided*, the order is filed and entered of record by the Clerk.

SEC. 340. Partnership interests may be sold at public auction by executor, on court's order, and notice to parties interested—sale to be confirmed by court.

SEC. 344. County Judge may authorize the execution by Administrator of mortgages, to the extent of existing liens, on real estate of decedent; and special administrators may be appointed, under section one of this chapter.

CHAPTER XXIV.

DEPUTIES.

SECTION 1. Each County Clerk, Sheriff, Treasurer, and Surveyor may appoint, in writing, a deputy, for whose acts he shall be responsible, and from whom he shall require a bond; and the appointment or revocation shall be filed with the County Clerk; and his official oath shall be endorsed on the appointment, and Deputy Clerks of Courts may take acknowledgments in the names of their principals.

CHAPTER XXV.

DIVORCE AND ALIMONY.

SEC. 4. Orders for alimony or maintenance are liens on property, as in other judgments, and the remedy is cumulative.

SEC. 6. A divorce from the bonds of matrimony may be decreed by the District Court of the county where the parties, or one of them, reside, on the application by the petition of the aggrieved party in either of the following cases: *First.* When adultery has been committed by any husband or wife. *Second.* When one of the parties was physically incompetent at the time of the marriage. *Third.* When one of the parties has been sentenced to imprisonment in any prison, jail, or house of correction, for three years or more; and no pardon granted, after a divorce for that cause, shall restore such party to his or her conjugal rights. *Fourth.* Where either party shall wilfully abandon the other without just cause, for the term of two years. *Fifth.* When the husband or wife shall have become an habitual drunkard. *Sixth.* When either party shall be sentenced to imprisonment for life; and no pardon shall effect a decree of divorce for that cause rendered.

SEC. 7. A divorce from the bonds of matrimony or from bed and board, may be decreed for the cause of extreme cruelty, whether practiced by using personal violence, or by other means; or for utter desertion of either party for the term of two years; and a like divorce may be decreed, on complaint of the wife, when the husband, being of sufficient ability to provide suitable maintenance for her, shall grossly or wantonly and cruelly refuse or neglect so to do.

SEC. 8. Six months residence required before suit; and no collusive suit entertained. Service by publication is allowed, and both parties may testify.

SEC. 13. Court may prohibit husband from restraint of wife; and may dispose of children; and on decree, wife shall have possession of her real estate as if the husband were dead; and Trustees may be appointed for the wife and children; and if the wife is awarded her personal estate, the Court may examine the husband on oath in respect to the same.

SEC. 23. In certain cases the wife may have dower as in case of death; and in case of the wife's adultery, the husband may be allowed her personal estate; and the court may require security for alimony decreed, and in default husband's property may be sold on execution; the decree being subject to revision.

SEC. 31. In divorces for consanguinity or negro blood, the children are illigitimate; in all other cases, legitimate; and parent or guardian may file petition for minor; or next friend for idiot or insane; and for force or fraud, the children shall go to the innocent party; and for physical incapacity the injured party only must sue within two years.

SEC. 39. In any suit brought for a divorce on the ground of adultery, although the fact of adultery be established, the court may deny a divorce in the following cases: *First.* When the offense shall appear to have been committed by the procurement or with the connivance of the complainant. *Second.* When the offense charged shall have been forgiven by the injured party, and such forgiveness be proved by express proof, or by the voluntary cohabitation of the parties with the knowledge of the offense. *Third.* When there shall have been no express forgiveness, and no voluntary cohabitation of the parties, but the suit shall not have been brought within five years after the discovery by the complainant of the offense charged.

SEC. 40. Order for maintenance may be made, although no divorce is granted; and limited divorces may be revoked on application of the parties, with proof of reconciliation.

SEC. 43. Where parties are separated, the Probate Court may give the wife the custody of the children, under twelve years, if she be not the offending party.

SEC. 45. It is bigamy for divorced parties to marry, pending proceedings to reverse the divorce decree, or during the time allowed to commence such proceedings, which is six months.

CHAPTER XXVI.

ELECTIONS.

SECTION 1. District, county, and township officers, elected on the Tuesday succeeding first Monday of November, each year.

[Qualification of electors prescribed by Organic Act, *ant.*]

SEC. 6. Electors privileged from arrest.

SEC. 14. Polls open from 8 A. M. to 6 P. M.; and Judges and Clerks shall be sworn, as prescribed in chapter on Official Bonds.

SEC. 17. Vacancies to be filled by electors present.

SEC. 18. Proclamation of the opening and closing of the polls; and boxes to be publicly exhibited, before voting, by a Judge.

SEC. 20. The County Clerk, previous to the opening of the polls, shall prepare duplicate poll books, in the manner and form following:

Poll books of an election, held in ——— precinct, ——— township, or ——— ward, in ——— county, on the ——— day of ———, A. D. ——, at which time A. B., C. D., and E. F., were Judges, and G. H. and I. K. were Clerks of said election—the following-named persons voted thereat:

NUMBERS AND NAMES OF ELECTORS.

No. 1.	A. B.	No. 3.	E. F.
No. 2.	C. D.	No. 4.	G. H.

We do hereby certify, that the above is a true list of persons voting at the above-named election.

ATTEST:
A. B.,
C. D., G. H.,
E. F., I. K.,
Judges of Election. *Clerks.*

TALLY LIST OF PERSONS VOTED FOR, AND FOR WHAT OFFICE, CONTAINING THE NUMBER OF VOTES FOR EACH CANDIDATE.

Governor.	**Member of Congress.**	**County Clerk.**	

We hereby certify that A. B. had —— votes for Governor, and C. D. had —— votes for Governor; that E. F. had —— votes for Member of Congress, etc.

ATTEST:
A. B.,
C. D., G. H.,
E. F., I. K.,
Judges of Election. *Clerks.*

SEC. 23. County Board to furnish ballot boxes; and deposit same with a Judge of Election, in each precinct.

SEC. 24 Constables may be designated by Judges, to preserve peace and make arrests.

SEC. 27. Challenges allowed by Judge or Elector; and if the challenged refuses to take prescribed oath, vote to be refused.

SEC. 33. Canvass shall be immediate and public.

SEC. 35. Excessive ballots to be drawn from box, by lot, before canvass commences.

SEC. 38. Double ballots rejected. Also those not stating the office voted for.

SEC. 41. Surname of candidate sufficient.

SEC. 43. Upon the completion of the canvass, the Judges of Election shall seal up in a package all the ballots counted, together with ballots marked as rejected, and mark the same "ballots cast." They shall also enclose one of the poll books in an envelope or cover, and seal the same. The poll book thus sealed, the package marked "ballots cast, and excessive ballots," if any there be, shall be securely bound together, and directed to the County Clerk. The packages thus bound together shall be conveyed to the County Clerk by one of the Judges or Clerks of Election, within four days from the close of the polls. The Clerk shall give a receipt stating that the poll books and ballots have been received and deposited with him.

SEC. 44. The result for township officers shall be certified to Township Clerk; and any tie vote shall be determined by lot.

SEC. 46. County canvass to be made within six days, by County Clerk and two disinterested electors, who make separate abstracts for each office.

SEC. 47. Poll books and ballots to be kept by County Clerk for twelve months; and a tie vote to be determined by lot, by Clerk.

SEC. 52. For members of the legislature, duplicate abstracts shall be sent to the Secretary of State [Territory] for presentation to the Speaker and preservation.

SEC. 70. County Judge may hear contested election cases, for county, township and precinct officers.

SEC. 80. Any elector may contest the election of any officer; by filing a complaint within twenty days after the canvass, on oath, and filing a bond with County Clerk or Judge, conditioned to pay costs; setting out names and residence of illegal voters, if any.

SEC. 83. Summons shall be served on contestee, and trial had after thirty days, and shall be governed by ordinary rules of law and evidence—amendments being allowable, and also inspection of ballots.

SEC. 93. Judgment of ouster, entry, and for costs, may be rendered, and shall be executed by Sheriff.

SEC. 98. Appeals, and supercedeas, allowed; and on affimance; judgment against sureties.

SEC. 100. Appelant, out of possession, to give bond for costs.

SEC. 101. Every civil office shall be vacant upon the happening of either of the following events at any time before the expiration of the term of such office, as follows: *First.* The resignation of the incumbent. *Second.* His death. *Third.* His removal from office. *Fourth.* The decision of a competent tribunal declaring his office vacant. *Fifth.* His ceasing to be a resident of the State, district, county, township, precinct, or ward, in which the duties of his office are to [be] exercised, or for which he may have been elected. *Sixth.* A failure to elect at the proper election, there being no incumbent to continue in office until his successor is elected and qualified, nor other provisions relating thereto. *Seventh.* A forfeiture of office as provided by any law of the State. *Eighth.* Conviction of an infamous crime, or of any public offense involving the violation of his oath of office. *Ninth.* The acceptance of a commission to any military office, either in the militia of this State or in the service of the United States, which requires the incumbent in the civil office to exercise his military duties out of the State for a period not less than sixty days.

SEC. 103. Vacancies shall be filled in the following manner: In county and precinct offices by the County Board; and in the membership of such Board by the County Clerk, Treasurer and Judge. In township offices by the Town Board, but where the offices of the Town Board are all vacant the Clerk shall appoint, and if there be no Town Clerk the County Clerk shall appoint. In city and village offices, by the Mayor and Council or Board of Trustees.

SEC. 106. When a vacancy occurs in a public office, possession shall be taken of the office room, and of the books, papers, and all things pertaining to the office, to be held until the election or appointment and qualification of a successor, as follows: Of the office of County Clerk by his deputy, if there be one, if not, by the County Judge; and in case of any delay in the election or appointment of a successor to the County Clerk, his deputy shall continue to discharge the duties of the office, being responsible for the conduct and management thereof upon his official bond. Of the office of County Treasurer by the Sheriff. Of any of the State officers, by the Governor, or in his absence or inability at the time of the occurrance, as follows: Of the Secretary of State, by the Treasurer. Of the Auditor of Public Accounts, Commissioner of Public Lands and Buildings, and Superintendent of Public Instruction, by the Secretary of State. Of the Treasurer, by the Secretary of State and Auditor of Public Accounts, who shall make an inventory of the money and warrants therein, sign the same, and transmit it to the Governor if he be in the State; and the Secretary of State shall take the keys of the safes and desks, after depositing the books, papers, money and warrants therein, and the Auditor shall take the key of the office room.

SEC. 115. When at any general or special election a ballot with a designated heading contains printed thereon, in place of another, a name not found on the regular ballot having such heading, such name shall be regarded by the Judges as having been placed therein for the purpose of fraud, and the ballot shall not be counted for the name so found.

SEC. 116. That any person causing ballots to be printed with a designated heading containing a name or names not found on the regular ballot having such heading, or any person knowingly peddling or distributing any such ballot with intent to have such ballot voted at any such general or special election, shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, for each offense be fined in any sum not less than fifty nor more than two hundred dollars and be imprisoned in the county jail not exceeding sixty days.

CHAPTER XXVIII.

FEES AND SALARIES.

SECTION 1. The salaries and fees of officers shall be as follows:

SHERIFF.

Search warrant, $1; arresting each person under same, $1; summons, attachment, replevin, injunction, citation or other writ of *mesne* process, 50 cents for first defendant, and 25 cents for others; copy of summons or attachment 25 cents; subpœna each witness served, 25 cents; taking and approving bond, 50 cents; making any other copy, 25 cents; for each mile actually traveled, 5 cents; levy of execution, $1; writ of possession, with *posse*, $2; without, $1; summoning special jury, each person empaneled, 25 cents; notice of motion, or order of court, 50 cents; *habeas corpus*, $1; restitution $1; inquest on appraisement, 50 cents; newspaper advertisement, 50 cents; written sale notices, $1; writ of partition, $2; making deed, $1; committing prisoner, 50 cents; attending criminal trial, $1; commission on money disbursed, three per cent. on first $400, two per cent. on addition up to $1,000, and one per cent. above that; for death warrant what County Commissioners allow; for guarding prisoners, $2 per day; as jailor of actual prisoners, $1.50 per day; for boarding prisoners, 75 cents per day, or $3.50 per week.

CORONER.

SEC. 7. Viewing dead body, $10; summoning inquest, 50 cents; returning inquisition, 10 cents per folio; for *post mortem*, $10, to each physician, and extra in cases requiring dissection; (to be paid by slayer), and mileage; for all other services same as Sheriff, above.

COUNTY JUDGE.

SEC. 8. The same fees as Justices in all cases, within latter's jurisdiction; in all other cases the following: Docketing, 25 cents; writ under seal, 50 cents; entering appearance, 15 cents; affidavits, 25 cents; filing papers 10 cents each; for copying or full entries, 10 cents per folio; approving bonds, 25 cents; recording same, 10 cents per folio; swearing witness, 10 cents; setting cause for trial, 25 cents; certificate and seal, 25 cents; execution, 25 cents; motions, 15 cents; on money collected without execution, one per cent. on $200, half of one per cent. on excess up to $500, and one-fourth of one per cent. on amount above $500; order of sale, 50 cents; attending trial, after first day, $1; adjournment or judgment, 50 cents; dismissal or satisfaction, 25 cents; marriage license, $1.50; for probate business, the following: Filing petitions, 50 cents; citation or notice under seal, 50 cents; order for hearings, 50 cents; proof of will, $2; approving bond, 25 cents; recording, 10 cents per folio; issuing letters, $2; for all copies, 10 cents per folio; making decrees, first one hundred words, 50 cents, excess, 10 cents per folio; filing accounts and vouchers, 50 cents; examining final accounts, $1, with two cents extra for all vouchers over fifty; appointing Commissioners 50 cents; recording their report, 50 cents, with 10 cents per folio in excess of one hundred words; recording inventory, same; registering claims, 10 cents; for swearing witness, certificate and seal and attending court, per day, same as above.

JUSTICE OF THE PEACE.

SEC. 11. Docketing, 25 cents; affidavit, 25 cents; filing papers, 10 cents each; summons, subpœna, order of arrest, venire, attachment, order of sale, execution, replevin and judgment, each 50 cents; writ of restitution, $1; swearing witness, 10 cents; acknowledgment, 50 cents; certificate and seal and swearing jury, each 25 cents; taking depositions and making all copies, 10 cents per folio; information 50 cents; warrant and mittimus, $1; discharge to jailor, dismissal or satisfaction, each, 25 cents; written notices, 10 cents;

adjournment, 50 cents; motion for rehearing, 30 cents; marriages, $3; taking bail and entering award, 25 cents; motion or rule, 10 cents; reference to arbitrators, 50 cents; on money collected without execution, one per cent.

CONSTABLES.

SEC. 12. Are allowed same fees as sheriff.

COUNTY CLERK.

SEC. 13. That in all counties the County Clerk shall receive for recording deed, mortgage, or other instrument, for the first two hundred (200) words, seventy-five (75) cents, and for each ten (10) words thereafter one (1) cent; copying of record for each ten (10) words one (1) cent; certificate and seal twenty-five (25) cents; entering satisfaction of mortgage or lien twenty-five (25) cents; for preparing tax list four (4) cents per line, including footings and recapitulations: *Provided*, That no fee shall be paid the County Clerk in counties having seventy thousand (70,000) inhabitants and upwards for making said list.

SEC. 13*a*. All fees to be entered on fee book and accounted for, except fees for making tax list.

SEC. 14. Issuing certificate of election, twenty-five cents. For performing the duties of Clerk to the County Commissioners, and attending to the business of the county, such salary per annum, to be paid by the county quarterly, as the Commissioners of the county shall allow, not exceeding in any one year the sum of four hundred dollars. For each certificate and seal, in other cases, twenty-five cents. For recording each certificate of marriage, twenty-five cents.

SEC. 15. Grand and petit jurors shall receive for their services two dollars for each day employed in the discharge of their duties, and mileage at the rate of five cents for each mile necessarily traveled.

SEC. 16. For surveying all lands, except town lots, per day, four dollars. For each lot laid out and platted in any city or town, one dollar. For each copy of plat and certificate, fifty cents. Recording each survey, twenty-five cents. For each mile actually and necessarily traveled in going to and from work, ten cents. For establishing each corner, twenty-five cents. For ascertaining the location of a city or town lot in an old survey, and measuring and marking the same, two dollars. For surveying county roads, per day, five dollars. Expenses of necessary assistance shall, in addition, be paid by the party or parties requiring the work to be done.

SEC. 17. For printing and publishing legal advertisement in newspapers, as follows: Each square, of ten lines, for the first insertion one dollar, Each subsequent insertion, for each square of ten lines, fifty cents. Each legal advertisement under ten lines shall be deemed a square, and each fractional part of a square shall be counted as a full square. For publishing list of lands upon which taxes are delinquent, each description twenty cents. For publishing list of town lots on which taxes are delinquent, each description ten cents.

SEC. 20. Each County Treasurer shall receive for his services the following fees: On all moneys collected by him for each fiscal year, under three thousand dollars, ten per cent. For all sums over three thousand dollars and under five thousand dollars, four per cent. On all sums over five thousand dollars, two per cent.

NOTARIES.

SEC. 19. For each protest, $1; recording, 50 cents; notice, 25 cents; affidavit and seal, 25 cents; oath 10 cents; depositions, 20 cents per folio; certificate and seal, 25 cents; acknowledgment, 50 cents; for travel 5 cents per mile.

COUNTY BOARD'S COMPENSATION.

SEC. 22. For time necessarily employed, each Commissioner shall receive $3 per day, and mileage five cents per mile.

ELECTION OFFICERS,

Shall receive $2 per day, and five cents per mile, for travel in making returns to County Clerk.

WITNESSES AND JURORS.

Before County Court and Justices, shall receive $1 per day, and five cents per mile.

SEC. 26. In attachments, fees and necessary costs of taking possession may be demanded before service; in other cases, fees may be demanded or security required.

SEC. 32. Payment may be refused until bill of particulars is rendered, and receipt tendered; and items must be entered on *mesne* process; and taking illegal fees subjects the officer to a forfeiture of fifty dollars; and tables of fees allowed are to be posted in the respective offices.

SEC. 38. *Per diem* salaries must be verified by oath, before payment; and disbursing officer paying without oath forfeits fifty dollars.

SEC. 41. County Board must examine books of officers, and order monies belonging to county under this chapter to be paid into county treasury.

SEC. 43. Each of the officers named in section one of this act shall, on the first Tuesday of January, April, July and October of each year, make a report to the Board of County Commissioners under oath, showing the different items of fees received, from whom, at what time and for what service, and the total amount of fees received by such officer since the last report, and also the amount received for the current year.

SEC. 44. Each of the officers named in section one of this act shall keep a book, which shall be provided by the county, and which shall be known as the fee book, and shall be a part of the records of such office, and in which shall be entered each and every item of fees collected, showing, in separate columns, the name of the party, from whom received, the time of receiving the same, the amount received, and for what service the same was charged.

SEC. 45. Any of the officers named in section one of this act who shall omit to comply with the provisions of this act, or shall fail or neglect to keep a correct account of the fees by him received, or shall fail and neglect to make a report to the Board of County Commissioners as herein provided, or shall wilfully or intentionally omit to charge the fees provided by law, with intent to evade the provisions of this act, shall be deemed guilty of a misdemeanor, and, upon conviction, shall for each offense be fined in any sum not less than twenty-five dollars, nor more than one hundred dollars; and any officer named in this act who shall make a false report under oath, shall be guilty of perjury, and punished accordingly.

SEC. 48. For entering each instrument presented for record in the numerical index after the completion of said index the Clerk shall receive the sum of fifteen cents to be paid in advance by the person offering the instrument for record.

CHAPTER XXXII.

FRAUDS, ETC.

SECTION 1. Conveyances of interest in lands made to defraud creditors are void, as against creditors and persons with knowledge.

SEC. 2. No interest in land, exceeding one year's lease, can be conveyed, otherwise than in writing; unless there has been part performance of agreement.

SEC. 7. Transfers of personalty, in trust for use of grantor, void as against creditors.

SEC. 8. In the following cases every agreement shall be void, unless such agreement, or some note or memorandum thereof, be in writing, and subscribed by the party to be charged therewith: *First.* Every agreement that, by its terms, is not to be performed within one year from the making thereof. *Second.* Every special promise to answer for the debt, default or misdoings of another person. *Third.* Every agreement, promise or undertaking made upon consideration of marriage, except mutual promises to marry. *Fourth.* Every special promise by an executor or administrator to answer damages out of his own estate.

SEC. 9. Every contract for the sale of any goods, chattels, or things in action, for the price of fifty dollars or more, shall be void, unless—*First.* A note or memorandum of such contract be made in writing, and be subscribed by the party to be charged thereby; or, *Second.* Unless the buyer shall accept and receive part of such goods or the evidences, or some of them, of such things in action; or, *Third.* Unless the buyer shall, at the time, pay some part of the purchase money.

SEC. 11. Sales of personalty void, as against creditors, unless property is delivered in good faith, and chattel mortgages void unless deposited with County Clerk, who shall index the same alphabetically; and mortgagee who neglects to discharge satisfied mortgage of record shall pay $50, and all damages; and every such mortgage shall be void after five years; and Clerk fee is twenty cents, and ten cents a folio for copies.

SEC. 17. Contracts made with intent to defraud or delay creditors, are void, and the question of intent is a question of fact and not of law; but not to affect purchasers without notice.

SEC. 28. If any person or persons in this State, with intent to cheat or defraud his creditors or any of them, or with a fraudulent intent to hinder or delay his creditors or any of them, in the collection of his or their demands, shall sell, transfer, secrete, encumber, or in any way fraudulently dispose of any of or all of his goods, wares, merchandise, chattels, bills receivable, choses in action, or property of any kind, or who, upon any sale of any goods, wares, merchandise or property of any kind, with a fraudulent intent to hinder or delay or to cheat or defraud his creditors or any of them, shall secrete, assign, transfer, conceal, or in any way fraudulently dispose of all or any part of the proceeds of any such sale of any property, he or they shall be deemed guilty of a fraudulent transfer of property, and upon conviction thereof shall be punished in the same manner and to the same extent as if he had been convicted of the larceny of the same property.

CHAPTER XXXIV.

GUARDIANS AND WARDS.

SEC. 6. The father and mother, or the survivor, are natural guardians of their children.

SEC. 8. Guardians appointed by the Probate Court, shall continue to act until his male ward is twenty-one, or female is eighteen, unless sooner discharged, according to law.

SEC. 9. He shall give bond, conditioned: *First*, To make inventory; *second*, to manage property for ward's best interest; *third*, to render accouut on oath within one year; *fourth*, to settle his accounts, and pay over balances.

SEC. 14. Guardians may be appointed for mental incompetents and spendthrifts, on notice given.

SEC. 24. Guardians may procure license to sell real estate, when necessary; shall take oath to faithfully discharge his duties; and may be punished for contempt; and may resign or be removed; and be fined and imprisoned for negligence or maltreatment of ward; on the sworn application of any one filing an information.

SEC. 33. Embezzlers of minors estate may be proceed against as in case of Administrator; and guardians may be appointed for non-resident minors; and guardians compensation to be fixed by court.

CHAPTER XXXVI.

HOMESTEADS.

SECTION 1. One hundred and sixty acres, or two town lots, not exceeding in value $2,000, exempt from forced sale; except for laborer's, mechanics or vendor's liens thereon, a mortgage executed by husband and wife; and may be set apart in District Court, on petition, and ten days notice, by the oath of three disinterested residents of county, who shall receive the fees of jurors.

CHAPTER XLI.

INSTRUMENTS NEGOTIABLE.

SECTION 1. All bonds, promissory notes, bills of exchange, foreign and inland, drawn for any sum or sums of money certain, and made payable to any person or order, or to any person or assigns, shall be negotiable, by endorsement thereon, so as absolutely to transfer and vest the property thereof in each and every endorse successively; but nothing in this section shall be construed to make negotiable any such bond, note, or bill of exchange, drawn payable to any person or persons alone, and not drawn payable to order, bearer or assigns: *Provided*, That all such bonds, promissory notes, and bills of exchange, made payable to bearer, shall be transferable by delivery without endorsement thereon.

SEC. 2. Any endorsee to whom any such bond, note, or bill of exchange, made negotiable by the preceding section, is made payable by such endorsement or endorsements, may, in his own name, institute and maintain an action on such bond, note, or bill, for the recovery of the money due thereon, against the maker, drawer, or obligor, or against the endorsee, having first used due diligence to obtain the money of the drawer, maker, or obligor.

SEC. 3. All notes, bonds, or bills, made negotiable by this chapter, shall be entitled to three days grace, in the time of payment, and the demand of payment, from the maker, on the third day of grace or of acceptance, if the instrument is a sight draft, and notice of non-payment or non-acceptance thereof to the endorser, within a reasonable time, shall be adjudged due diligence under the provisions of this chapter, unless the endorsement shall express, in writing, other conditions.

SEC. 4. If any such bond, note, or bill of exchange, shall be endorsed after the day on which it is made payable, and the endorsee shall institute an action thereon against the maker, drawer, or obligor, the defendant shall be allowed to set up the same defense that he might have done had the same action been instituted in the name and for the use of the person to whom the said note, bond, or bill was originally made payable.

SEC. 5. If any such bond, note, or bill of exchange shall be endorsed on or before the day on which the same is made payable, and the endorsee shall institute an action thereon, the defendant may give in evidence at the trial any money actually paid on said bond, note, or bill of exchange, before the same was endorsed or assigned to the plaintiff, on proving that the plaintiff had notice of such payment before such endorsement was made and accepted.

SEC. 6. It shall be lawful for any person or persons having a right to demand any sum of money upon any protested bond, note, or bill of exchange as aforesaid, to commence and prosecute an action for principal, damages, interest, and charges of protest against the drawers, makers, or endorsers, jointly and severally, or against either of them saparately. And judgment shall and may be given for such principal, damages, charges, and interest upon such principal, after the rate aforesaid, to the time of such judgement, together with costs of suit.

SEC. 7. When any bill of exchange shall be drawn for the payment of any such sum of money, and such bill shall be legally protested for non-acceptance or non-payment, the drawer or drawers, endorser or endorsers, shall be subject to the payment of twelve per centum damages thereon, if drawn upon any person or persons, or body corporate, without the jurisdiction of the United States, and six per centum damages thereon, if drawn upon any persons, or body corporate, within the jurisdiction of the United States, and without the jurisdiction of this State.

SEC. 8. That the following days, to wit: the first day of January, February twenty-second, and the twenty-second of April which shall be known as "Arbor Day," the twenty-fifth day of December, the thirtieth day of May, and July fourth, and any day appointed or recommenced by the Governor of this State or the President of the United States as a day of fast or thanksgiving, and when any one of these days shall occur on Sunday, then the Monday following, shall, for all purposes whatsoever as regards the presenting for payment or acceptance, and the protesting and giving notice of the dishonor of bills of exchange, bank checks, or promissory notes, made after the passage of this act, be deemed public holidays, and be treated and considered as is the first day of the week commonly called Sunday: *Provided*, That when any of these days shall occur on Monday, any bill of exchange, bank check, or promissory note, made after the passage of this act, which but for this act would fall due and be payable on such Monday, shall become due and payable on the day thereafter.

CHAPTER XLIV.

INTEREST.

SECTION 1. Interest at ten per cent. per annum is recoverable on contract to that effect; and at seven per cent. when the rate is not specified; and judgments shall carry the contract rate from the date thereof. On unsettled accounts, it runs after six months from last item, and from the date of an agreed balance. If usury be proven by principal, or agent, the plaintiff can recover principal only, and if the interest has been already paid, it shall be deducted.

CHAPTER XLVI.

JAILS.

SECTION 1. District Judges to prescribe rules for the regulation of jails; as to, *first*, cleanliness; *second*, classification of prisoners; *third*, beds and clothing; *fourth*, light, heat, and ventilation; *fifth*, medical attendance; *sixth*, employment, temperance, and instruction; *seventh*, Bibles; *eighth*, visits of counsel; *ninth*, punishments; *tenth*, other necessary matters; said rules to be furnished County Commissioners, who shall publish same, and Sheriff shall keep copy posted in every cell.

SEC. 6. Jailer shall keep a register, showing: *First*, Name, date, and cause of commitment; *second*, discharge; *third*, cases of sickness, and cause; *fourth*, amount and value of labor performed; *fifth*, times and manner of cleaning cells; *sixth*, habits of prisoners, as to cleanliness, diet and order; *seventh*, means of instruction and labor; and shall annually, November 1st, make jail report, and file copy with District Clerk and another with County Clerk, and transmit another copy to Secretary of State, for general assembly.

SEC. 8. District Judges to give this chapter in charge to Grand Jury; who shall visit jail, each term; and County Board may appoint physician to jail.

SEC. 11. Jailer is allowed, for boarding prisoners, seventy-five cents per day; and shall make quarterly report to State Auditor, of cost of State prisoners; and Sheriff shall personally visit jail once a month, and cause each cell to be whitewashed three times a year; and Jailer, other than Sheriff, shall be sworn; and any violation of the foregoing provisions subjects the Sheriff to a fine of five to one hundred dollars, in the District Court.

CHAPTER L.

LIQUORS.

SEC. 11. No person, without license, shall sell or give away any malt, spirituous or vinous liquors, or any intoxicating drinks, under penalty of fine, of from one hundred to five hundred dollars, or imprisonment in county jail, not exceeding one month; except domestic wine in quantities of one gallon and over. And offenders are to be tried in District Court.

SEC. 13. Any person who intentionally sells or gives away liquor adulterated with strychnine, strontia, sugar-of-lead, or other substance, shall forfeit one hundred dollars. Analysis made by a competent chemist made evidence.

SEC. 14. Selling or giving away liquors on election day or Sunday, forfeits one hundred dollars.

SEC. 18. In trials for injuries inflicted while offender was under the influence of liquor, it is sufficient to prove a selling or giving away of the liquor.

SEC. 19. Justices of the Peace have jurisdiction, when the claim does not exceed one hundred dollars.

SEC. 23. Fines go to school fund.

SEC. 24. The County Board may grant permits to druggists to sell for medicinal, mechanical and chemical purposes.

SEC. 25. Corporate authorities may grant such permits to druggists.

SEC. 26. Druggists holding permits shall keep a register of date, kind, quantity and purpose, and to whom sale is made, which shall be open to public inspection; shall file reports with Clerk each January and July, under oath; and druggist failing to comply, are guilty of misdemeanor, and shall forfeit twenty to one hundred dollars, and be imprisoned from ten to thirty days.

SEC. 27. Persons making false statements of purpose for which purchase is made shall be fined ten dollars and costs, and stand committed until payment. For second offense the fine is twenty dollars and costs, and imprisonment ten to thirty days.

SEC. 28. Persons found intoxicated are guilty of misdemeanor; may be arrested and detained by peace officer; and if found guilty shall be fined ten dollars and costs, or be imprisoned not more than thirty days; punishment to be remitted if prisoner will turn imformer; and appeal is allowed.

CHAPTER LII.

MARRIAGE.

SECTION 1. Marriage is a civil contract; and the male must be eighteen, and female sixteen; and contract will be void: *First*, between a white person and quarter-blood negro; *second*, a previous existing marriage; *third*, insanity or idiocy; *fourth*, consanguinity; and license from Probate Judge is necessary; and for minor's consent of parents or guardians.

SEC. 6. When application shall be made for a license to the Probate Judge he shall, upon the granting of such license, state therein the Christian and surnames of the fathers of both parties, the Christian and maiden names of the mothers of both parties, the Christian and surnames of the parties, the residence of both parties, their places of birth, their respective ages, their color, which license shall, prior to the issuing thereof, be entered of record, in the office of the Probate Judge, in a suitable book to be provided for that purpose.

SEC. 8. The "ceremony" may be by a Judge, Justice, or preacher, in presence of two witnesses; and return made within three months, to Probate Court by endorsement on the license, and be recorded in same book; and each party may demand a certificate, stating names, time, place and witnesses.

SEC. 13. Any neglect or wilful violation of foregoing provisions, subjects offenders to fine not exceeding $500, or imprisonment not exceeding one year.

CHAPTER LIII.

MARRIED WOMEN.

SECTION 1. The separate property of a married woman, not liable for husband's debts; and she has the sole right to convey the same; and may separately sue and be sued; and carry on business alone, and separately hold the proceeds thereof; but the property of the husband shall not be held for anti-mutual debts of the wife.

CHAPTER LIV.

ARTICLE 1.—MECHANIC'S LIENS.

SECTION 1. Any person who shall perform any labor, or furnish any material or machinery or fixtures for the erection, reparation or removal of any house, mill, manufactory, or building or appurtenance by virtue of a contract or agreement expressed or implied with the owner thereof or his agents, shall have a lien to secure the payment of the same upon such house, mill, manufactory, building or appurtenance, and the lot of land upon which the same shall stand.

SEC. 2. Sub-contractors and persons furnishing materials, may secure same lien, by filing with Register of Deeds, within sixty days after service, a sworn statement, with description of premises.

SEC. 3. Any person entitled to a lien under this chapter shall make an account in writing of the items of labor, skill, machinery, or material furnished, or either of them, as the case may be, and after making oath thereto shall, within four months of the time of performing such labor and skill, or furnishing such machinery or material. file the same in the office of the Register of Deeds of the county of which such labor, skill and materials shall have been furnished, which account so made and filed shall be recorded in a separate book to be provided by the Register of Deeds for that purpose, and shall from the commencement of such labor or the furnishing such materials for two (2) years after the filing of such lien operate as a lien on the several descriptions of such structures and buildings and the lots on which they stand, as in the first section of this chapter named. When any labor has been done or materials furnished as provided on a written contract, the same or a copy thereof shall be filed with the account herein required. And if any promissory note shall have been taken for any such labor or materials it shall be sufficient to secure the lien provided for in sections one and two hereof, to file in the office of the Register of Deeds a copy of such note within the time aforesaid, together with a sworn statement that the sum for which said note was given, or any part thereof, is due for labor and material used for the purpose hereinbefore mentioned, giving in such statement the items of such labor and material, and such lien shall be for the amount so shown to be due for such labor and material, with interest at the rate specified in said note: *Provided*, Nothing herein contained shall be taken to prevent the ascertainment by proceedings at law, or otherwise, of the amount actually due for such labor and material, and such lien shall be for no larger sum than the amount actually due therefor.

SEC. 4. Lien continues until end of action; and if work is suspended, lien-holder may continue same at his cost, to prevent waste; and if title to premises is defective; officer shall lease until rents satisfy the lien.

SEC. 8. If after payment of claim, lien-holder refuses to discharge lien, he loses his lien and must pay all costs; and if owner is beyond the reach of process, claimant may proceed as upon attachment.

SEC. 12. Lien-holder, on request, shall lodge a certificate with the Clerk, that the lien is discharged, to be recorded on the margin of the record.

SEC. 13. Lien-holder may require insurance, and in default, himself insure, and recover premium paid; and the remedies under this chapter are cumulative only.

ARTICLE 2.—LABORER'S LIEN.

SECTION 1. Laborer's wages on any public work, may be a lien thereon,

by notice served within sixty days after last item of account, specifying nature and amount of claim, and be delivered to President, Managing Director, or Engineer of the work; and a correct sworn account of laborer or material man, containing description of property to be charged must be filed by principal contractor within ninety days or by sub-contractor within sixty days from date of last item; which lien shall continue two years, and until suit is ended; and claimant shall file with County Clerk a just and true statement of his account, and containing a correct description of the property to be charged.

CHAPTER LXI.

NOTARIES PUBLIC.

SECTION 1. On petition of twenty-five voters of county, the Governor will appoint Notaries Public for each county, and unorganized territory attached, to hold for six years.

SEC. 2. A commission and blank for bond in the sum of two thousand dollars, to be sent to County Clerk, and if the bond be not executed by appointee and two resident freehold sureties, within thirty days after notice, commission is to be returned; but if so executed, Clerk will make record of the same, and notify Secretary of [Territory.]

SEC. 5. Seal shall contain the words "Notarial seal" and name of county and the word [Oklahoma]; and he shall keep a record of all acts except acknowledgments, which record and seal are exempt from execution.

SEC. 6. He may perform the customary functions of the office; but his *prima facie* certificate may be contradicted by persons interested.

SEC. 7. Executive officers are required to serve his process for witness; and he may punish for contempt; and for negligence or misconduct, suit lies on the bond.

SEC. 9. Within thirty days after vacating his office, he shall certify and seal his record book, and deposit the same with County Clerk, which will then be presumptive evidence of his acts, in case of his death or removal from the [Territory]. On failure he forfeits two hundred dollars to school fund. And a like penalty is incurred by Clerk for neglecting foregoing duties; and abbreviation of words on seal, does not invalidate his acknowledgments.

SEC. 12. When vacancies occur, County Clerk must notify Secretary of [Territory] and the latter must notify the Governor.

SEC. 13. The Secretary's fee is one dollar, and the Clerk's fee is two dollars, on each commission issued to a Notary, payable to the Clerk, who transmits Secretary's fee.

SEC. 14. If charges of malfeasance are made, the Governor will appoint a disinterested person to notify the accused; and hold an inquest and hear testimony by deposition on ten days' notice; and has power of removal; and within thirty days after order of removal, the Notary so removed must deposit his commission and certified record with County Clerk, under a penalty of two hundred dollars, to be recovered as in section nine; and he shall be disqualified for re-appointment; witness fees to be paid by county as in cases of taking depositions.

CHAPTER LXXIII.

REAL ESTATE.

SECTION 1. **Deeds for any interest in real estate, except yearly leases,** must be signed by one or more witnesses, and be acknowledged or proved and recorded, as herein directed. The grantor must acknowledge the instrument to be his voluntary act and deed, before a Judge or Clerk of any court, or Justice of the Peace, or Notary Public resident, and within his territorial jurisdiction; but if executed in any other State or Territory of the United States, it may be in accordance with the law thereof, but the deed shall have attached a sealed certificate of a proper officer, stating that the person taking the acknowledgment was the person he represents himself to be; that he is well acquainted with his hand writing; that he believes his signature to be genuine, and that the instrument is executed according to the law of the place where made, if executed in a foreign country, it may be acknowledged before a Notary, Minister resident, *charge*, Commissioner, Consul, or Commercial Agent of the United States. If the grantor die before delivery, or refuse to acknowledge, it may be proved by any competent subscribing witness, and the officer may subpœna such witness who may be fined and committed for contumacy.

SEC. 12. Certificate of acknowledgment or proof to be endorsed on deed.

SEC. 13. Every deed so executed may be put in evidence without further proof, and is entitled to record. Also the record or a transcript thereof, but is *prima facie* only; and every such deed will be considered as recorded as of the time of its delivery for record.

SEC. 16. As to creditors and *bona fide* purchasers without notice, such deeds take effect from time of recording, but are void as against their subsequent deeds first recorded; and deeds shall not be deemed recorded unless executed in the manner herein prescribed; and no recorded Power of Attorney affecting real estate can be revoked until the revoking instrument is so recorded.

SEC. 21. The copy of any record or of a recorded deed, duly attested, may be again recorded, with like effect as an original, when the latter is lost.

SEC. 22. Probated wills, affecting real estate, to be recorded in same manner with deeds. Also, partition decrees and judgment records, and evidence, affecting real estate; and in his index the Register shall place names of devisor, petitioner or plaintiff, with grantors, and devisees and defendants with grantees.

SEC. 25. Deeds absolute intended as mortgages shall be accompanied on the record with the qualified instruments or the grantee will derive no benefit.

SEC. 26. Mortgages may be discharged by entry on the record margin signed by mortgagee, in Register's presence, who shall sign as a witness, or by the Register, when presented with an acknowledged certificate, specifying that mortgage has been satisfied, which latter certificate shall be recorded; and recorded instruments shall be marked with book and page of record.

SEC. 41. Any County Clerk or acknowledging officer found guilty of malfeasance or fraud in respect to the provisions of this chapter, is subject to fine and imprisonment.

SEC. 51. When a deed purports to convey a greater interest than the grantor was at the time possessed of, any after acquired interest of such grantor to the extent of that which the deed purports to convey, shall accrue to the benefit of the grantee: *Provided, however*, That such after acquired interest shall not inure to the benefit of the original grantor, or his heirs or assigns, if the deed conveying said real estate was either a quit-claim or special warranty, and the original grantor in any case shall not be stopped from acquiring said premises at judicial or tax sale, upon execution against the grantee or his assigns, or for taxes becoming due after date of his conveyance.

SEC. 56. Every instrument required by any of the provisions of this chapter to be subscribed by any party, may be subscribed by his agent thereto authorized by writing.

SEC. 57. That an action may be brought and prosecuted to final decree, judgment, or order, by any person or persons, whether in actual possession or not, claiming title to real estate, against any person or persons who claim an adverse estate or interest therein, for the purpose of determining such estate or interest, and quieting the title to said real estate.

SEC. 65. It shall be unlawful for any person or persons to engage in the business of compiling abstracts of titles to real estate in the State of Nebraska and demand and receive pay for the same without first filing in the office of the County Judge of the county in which such business is conducted, a bond to the State of Nebraska in the penal sum of ten thousand dollars ($10,000), with not less than three sureties residents of the county, to be approved by such County Judge, conditioned for the payment by such abstracters of any and all damages that may accrue to any party or parties by reason of any error, deficiency or mistake in any abstract or certificate of title made and issued by such person or persons.

SEC. 66. When any abstracter shall have duly filed his bond as above provided, he shall be entitled to receive a certificate from such County Judge that said bond has been by him duly approved and filed for record, which certificate shall be valid so long as such abstracter shall maintain his surety upon the bonds as herein provided for, unimpaired, and the possession of such valid certificate, at the date of issuance of any abstract, shall entitle such abstract of title to real estate, certified to and issued by such abstracter to be received in all courts as *prima facie* evidence of the existence of the record of deeds, mortgages, and other instruments, conveyances or liens affecting the real estate mentioned in such abstract and that such record is as described in said abstract of title.

SEC. 67. Any party to a civil action who may desire to use in evidence at the trial thereof any abstract of title to real estate as herein provided, shall furnish to the opposing party or his attorney a copy of such abstract at least three days before the trial of said action, and in case such real estate be not in the county where such trial is to take place, then such copy shall be so furnished to the opposing party or his attorney to allow a sufficient number of days, such opposing party to proceed by the usual route of travel, to the county seat of the county where such real estate may be situated and return to the place of trial, in addition to the three days for preparation above provided for.

PART III.

CRIMINAL CODE.

PART I.—CRIMES AND OFFENSES.

A list of Crimes and Offenses, as defined by the Criminal Code of Nebraska, which are punishable if committed in Oklahoma.

In virtue of the Act of Congress, establishing Territorial Government therein; together with an abridgment of so much of the *"CODE OF CRIMINAL PROCEDURE"* as is "locally applicable."

SEC. 3. ***MURDER,*** (first degree) is killing with premeditated malice; or by poison; or in the commission of felony; or by false swearing whereby life is taken. Punishable with death. (Second degree) is killing purposely with malice, but without premeditation. Punishment, ten years to life imprisonment.

SEC. 5. ***MANSLAUGHTER,*** is unlawful killing, without malice, or while committing an unlawful act. Penalty, imprisonment one to ten years.

SEC. 6. ***FŒTICIDE,*** is causing the death of vitalized embryo. Penalty, imprisonment, one to ten years.

SEC. 7. ***PRIZE FIGHTING.*** Penalty, one to ten years in penitentiary, and payment of costs. Aiders and abettors therein punishable by fine of five to one hundred dollars, and imprisonment in county ten days to three months, and pay costs.

SEC. 9. ***DUELLING.*** Penalty, imprisonment one to ten years; and if death is caused, it is murder, and punishable as such, as the case is found.

SEC. 10. ***AFFRAY*** or fisticuffs, is wilful fighting on agreement. Penalty, fine and imprisonment, fifty dollars and ten days.

SEC. 11. ***RAPE*** (on daughter or sister) is forcible connection with such persons. Penalty, imprisonment for life.

SEC. 12. ***RAPE,*** is forcible connection with any other female, or with a child under fifteen, by consent. Penalty, imprisonment three to twenty years.

SEC. 13. ***ROBBERY,*** is taking property by force or putting in fear, with intent to steal. Penalty, three to fifteen years.

SEC. 14. ***FELONIOUS ASSAULT,*** is assailing with intent to murder, rape, or rob the person assaulted. Penalty, two to fifteen years.

SEC. 15. ***MAIMING AND DISFIGURING.*** If any person shall voluntarily, unlawfully, or on purpose, cut or bite the nose, lip or lips, ear or ears, or cut or disable the tongue, put out an eye, slit the nose, ear or lip, cut or disable any limb or member of any person, with intent to murder, kill, maim, or disfigure such person, every person so offending shall be imprisoned in the penitentiary, not more than twenty years nor less than one year.

SEC. 16. ***SHOOTING OR STABBING,*** with intent to wound, maliciously Penalty, imprisonment one to twenty years.

SEC. 17. ***ASSAULT AND BATTERY,*** and menacing threats. Penalty, fine one hundred dollars, and imprisonment in county, three months, or both, and liable to injured party.

SEC. 17*a*. ***PROVOKING ASSAULT,*** by grossly vile and insulting epithets, is a misdemeanor. Penalty, fine ten dollars, and imprisonment ten days.

SEC. 18. ***KIDNAPPING,*** is carrying away or arresting contrary to law, or decoying, with intent to carry away person out of the State. Penalty, imprisonment three to seven years, and payment of costs.

SEC. 19. ***FALSE IMPRISONMENT*** "consists in detention without legal authority." Penalty, fine one hundred dollars, or imprisonment in county one year.

SEC. 20. ***CHILD STEALING.*** Every person who shall maliciously or forcibly or fraudulently lead, take or carry away, or decoy or entice away, any child under the age of ten years, with intent unlawfully to detain or conceal such child from its parent or parents, or guarnian, or other person having the lawful charge of such child, shall be imprisoned in the penitentiary not more than seven years nor less than one year.

SEC. 21. ***AIDING AND ABETTING SAME.*** Penalty, imprisonment one to seven years.

SEC. 25. ***CARRYING CONCEALED WEAPONS*** (unless justified by prudence). Penalty, fine one hundred dollars, or imprisonment in county thirty days; second offense, three months, or both.

SEC. 26. ***UNLAWFUL ASSEMBLY,*** of three or more persons, with intent to commit a riot. Penalty, fine one hundred dollars, and imprisonment three months.

SEC. 30. ***RESISTING OR ABUSING OFFICERS.*** Penalty, fine one hundred dollars, and imprisonment three months, or both.

SEC. 31. ***FORCIBLE RESCUE*** of offender. Penalty, fine five hundred dollars, and imprisonment thirty days.

SEC. 32. ***DISTURBING RELIGION.*** Fine, twenty dollars: *Provided*, Muscular Christianity may expel offender.

SEC. 35. ***DISTURBING COUNTY SURVEYOR,*** in the discharge of his duties. Penalty, fine one hundred dollars, and costs of Sheriff's prosecution.

SEC. 37. ***OBSTRUCTING JUSTICE.*** If any person or persons shall, corruptly or by threat, or force, endeavoring to influence, intimidate, or impede any juror, witness or officer, in any court of this State, in the discharge of his duty, or shall corruptly, or by threats or force, obstruct or impede, or endeavor to obstruct or impede, the due administration of justice therein, every person or persons so offending, shall be punished by fine, not exceeding one hundred dollars, or by imprisonment, not exceeding twenty days, or both.

SEC. 38. ***POISONING,*** with intent to kill. Penalty, imprisonment two to fifteen years.

SEC. 46. ***THREATENING LETTERS.*** Sending, is punishable by fine five hundred dollars, or imprisonment in county ten days, or both.

SEC. 47. ***LIBEL.*** Punishment, fine five hundred dollars, or imprisonment in county six months. "If published in a newspaper of general circulation, imprisonment in penitentiary one to three years."

SEC. 48. ***BURGLARY.*** If any person shall, in the night season, wilfully, maliciously and forcibly break and enter into any dwelling house, kitchen, smoke house, shop, office, store house, mill, pottery, factory, water craft, school house, church or meeting house, barn or stable, warehouse, malt house, still house, railroad car factory, station house, or railroad car, with intent to kill, rob, commit a rape, or with intent to steal property of any value, or commit any felony; every person so offending shall be deemed guilty of burglary, and shall be imprisoned in the penitentiary, not more than ten nor less than one year.

SEC. 49. ***FELONIOUSLY ENTERING CERTAIN BUILDING.*** If any person shall wilfully and maliciously, either in the day time or night season, enter any dwelling house, kitchen, shop, store, warehouse, malt house, still house, mill, factory, pottery, water craft, school house, church or meeting house, smoke house, barn or stable, and shall attempt to kill, disfigure or maim any person, rob, stab, commit a rape or arson; every person so offending shall be imprisoned in the penitentiary not more than ten years nor less than one year.

SEC. 50. ***POSSESSION OF BURGLARS' IMPLEMENTS.*** If any person shall be found having upon him or her any picklock, crow, key, bit, or other instrument or tool, with intent feloniously to break and enter into any dwelling house, store, warehouse, shop or other building, containing valuable property, he or she shall be deemed a vagrant, and punished by confinement in the penitentiary for a term not exceeding two years.

SEC. 51. ***BREAKING INTO DWELLING,*** in night, to commit violence or abuse. Penalty, fine three hundred dollars, and imprisonment in county thirty days; if in day time, fine one hundred dollars, and imprisonment thenty days. If the intent be to steal, fine three hundred dollars, and imprisonment sixty days.

SEC. 54. ***ARSON.*** Penalty, imprisonment one to twenty years. The attempt, one to seven years.

SEC. 55. ***BURNING*** insured property, with intent to prejudice insurer, is arson. Penalty, imprisonment one to twenty years. The attempt, one to seven years.

SEC. 56. ***BURNING HAY, GRAIN, ETC.,*** the property of another, of value of thirty-five dollars. Penalty, imprisonment one to three years. If value is less than thirty-five dollars, fine one hundred dollars, and imprisonment in county thirty days, or both.

SEC. 62. ***SETTING FIRE TO WOODS,*** or prairies, intentionally or carelessly. Penalty, fine one hundred dollars, and imprisonment in county six months: *Provided*, That between March 1st and November 1st owners may fire for self-preservation.

SEC. 63. ***ALTERING MARKS OR BRANDS,*** wilfully. Penalty, fine fifty dollars, and treble damages.

SEC. 64. ***KILLING*** or injuring animals maliciously, to amount of thirty-five dollars. Penalty, imprisonment one to three years. Less than thirty-five dollars value, fine one hundred dollars, and imprisonment in county three months, or both.

SEC. 66. ***POISONING ANIMALS.*** Penalty, fine one hundred dollars, or imprisonment in county thirty days.

SEC. 67. ***OVERWORKING,*** tormenting, starving, or exposing animals to cruel treatment, to their injury, is punishable by fine of fifty dollars.

SEC. 73. ***COCK FIGHTING.*** Penalty, fine twenty-five dollars.

SEC. 74. ***HORSE RACING*** on public road. Penalty, fine five dollars.

SEC. 76. ***KNOWINGLY SELLING*** or permitting diseased animals to run at large. Penalty, fine one hundred dollars, or imprisonment in county three months.

SEC. 80. ***RELEASING*** empounded cattle. Penalty, fine five to one hundred dollars.

INJURING FRUIT TREES, ETC.

SEC. 88. ***INJURING*** or destroying, maliciously, fruit or ornamental trees of another, of the value of thirty-five dollars, is felony. Penalty, imprisonment one to ten years, and double damages. If less than thirty-five, fine five to one hundred dollars, and double damages. To trees on commons or streets, same penalty as last.

SEC. 93. ***MALICIOUS INJURIES*** to railroad property, track or structure, or obstructing track, is felony. Penalty, imprisonment one to twenty years; if death be caused, it is murder.

SEC. 94. ***DRIVING*** team on track. Penalty, fine one to twenty-five dollars.

SEC. 95. ***MALICIOUSLY DESTROYING FIXTURES*** of railroad, constructed or in process of construction, of value of thirty-five dollars, is felony. Penalty, imprisonment one to three years. If less than thirty-five dollars, fine five to one hundred dollars, imprisonment thirty days, or both. Same penalty for malicious injury to telegraph property.

INJURIES TO PROPERTY GENERALLY.

SEC. 99. ***MALICIOUS INJURIES*** to bridges, or removal of land marks. Penalty, fine five hundred dollars, and imprisonment thirty days in county, or both.

SEC. 100. ***MILE STONES*** and guide boards. Penalty, fine fifty dollars, and imprisonment in county ten days.

SEC. 101. ***TOMBSTONES*** or cemeteries. Penalty, fine two hundred dollars, and imprisonment thirty days.

SEC. 104. ***PUBLIC NOTICES.*** Intentionally destroying. Penalty, fine ten dollars, and imprisonment one day.

SEC. 105. ***BRIDGES.*** Openly carrying fire across wood bridges, and fast driving across same. Penalty, fine five dollars.

SEC. 108. ***PERSONAL PROPERTY*** and buildings. Malicious injuries to amount of one hundred dollars. Penalty, imprisonment one to three years, and double damages. If less than one hundred dollars, penalty, imprisonment thirty days in county, and fine in double amount destroyed.

LARCENY, ETC.

SEC. 113*a*. ***STEALING*** from person, is grand larceny. Penalty, imprisonment one to seven years.

SEC. 114. ***STEALING*** thirty-five dollars, in property or money, or destroying choses in action to that amount, is larceny, Penalty, same as above.

SEC. 115. ***RECEIVING, KNOWINGLY,*** stolen property as above, of thirty-five dollars value, is felony. Penalty, same as above.

SEC. 116. ***HARBORING CRIMINAL,*** or concealing goods of thirty-five dollars value, with intent to defraud, is felony; punishable as above.

SEC. 117. ***HORSE STEALING.*** Stealing horse, etc., or knowingly buy or receive same, or knowingly conceal the property or thief, is felony. Penalty, imprisonment one to ten years.

SEC. 118. ***WILLS.*** Stealing, destroying, or secreting, is felony. Penalty, imprisonment one to ten years.

SEC. 119. ***PETIT LARCENY,*** and wilful destruction of choses in action or money of less value than thirty-five dollars. Penalty, restitution, fine of one hundred dollars, and imprisonment thirty days.

SEC. 120. ***CONCEALING SAME,*** when stolen. Penalty, fine one hundred dollars, and imprisonment thirty days.

SEC. 121. ***EMBEZZLEMENT,*** by clerk, attorney, agent, servant, or officer, administrator, guardian, assignee, carrier, inn-keeper, lodger, or bailee, of money or property of principal or employer, is punishable same as larceny of same amount.

SEC. 122. ***BUYING*** or receiving, knowingly, embezzled property, same punishment.

SEC. 124. ***EMBEZZLER*** of public money, liable to the above penalties.

SEC. 125. ***FALSE PRETENSES.*** Persons obtaining property or money by false pretense, or transfer void patents or stock, or make false documents to defraud creditors, to the amount of thirty-five dollars, punishable by imprisonment one to five years; but if less than thirty-five dollars, by fine of one hundred dollars, or imprisonment thirty days, and liable in damages to amount.

SEC. 126. ***FALSE PERSONATION,*** before court or public officer, with fraudulent intent. Penalty, imprisonment six years.

SEC. 127. ***CONVEYING LAND*** without having title, with intent to defraud. Penalty, imprisonment one to seven years.

SEC. 128. ***FRAUDULENT APPROPRIATION OF MERCHANDISE BY AGENT.*** Every factor or agent, who shall deposit any merchandise intrusted or consigned to him, or any document so possessed or intrusted aforesaid, as a security for any money borrowed, or negotiable instrument received by such factor or agent, and shall apply or dispose of the same to his own use, contrary to good faith, and with intent to defraud the true owner, and every factor or agent who shall sell any merchandise or other property intrusted or consigned to him, in the like manner, and with the like fraudulent intent, and every other person who shall knowingly connive with, or aid, or assist any such factor or agent in any such fraudulent deposit or sale, shall be imprisoned in the penitentiary not exceeding three years nor less than one year.

SEC. 130. ***FALSE BILLS*** of lading. The fraudulent making, punishable by imprisonment one to four years.

SEC. 134. ***FRAUD BY PARTNER,*** in the partnership business; fine five hundred dollars, or imprisonment six months, or both.

SEC. 136. ***FALSE WEIGHTS, ETC.*** The wilful use of, punished by fine fifty dollars, or imprisonment thirty day, or both.

FORGERY.

SEC. 145. ***FORGERY.*** If any person shall falsely make, alter, forge, counterfeit, print, or photograph any record, or any other authentic matter, of a public nature; or any license, or any certificate authorized by the laws of this State; or any charter, letters patent, deed, lease, writing obligatory, will, testament, annuity, bond, covenant, bank bill or note, check, draft, bill of exchange, contract, or promissory note, for the payment of money or other property; or any note, bond, coupons, stamps, postage, or fractional currency. or any security issued under authority of any act or acts of the Congress of the United States; or any acceptance of a bill of exchange; or the number of any principal sum of any accountable receipt, for any note; or any order, or any warrant or request, for the payment of money, or the delivery of goods and chattels of any kind; or any acquittance or receipt, either for money or goods; or any acquittance, release or discharge of any debt, account, action, suit, demand or other thing, real or personal; or any plat, draft or survey of land; or any transfer or assurance of money, stock, goods, chattels, or other property whatever; or any letter of attorney, or any other power to receive money, or to receive and transfer stock or annuities; or to let, lease, dispose of, alien, or convey any goods or chattels, lands or tenements, or other estate, real or personal; or any bills drawn by the auditor of public accounts, for the payment of money at the treasury; or any check, ticket, order or pass, purporting to have been issued by any railroad company, or by any officer or officers thereof, or by any street railroad company, or owner, or by any toll bridge company, or owner; or any private stamp, brand, wrapper, label, or trademark, usually affixed by any mechanic, manufacturer, druggist, merchant, or tradesman, to or upon the goods, wares, merchandise, preparation or mixture of such mechanic, manufacturer, druggist, merchant, or tradesman; or the seal of any public officer or office authorized or established in pursuance of the laws of this State, or of the United States, with intent to damage or defraud any person or persons, body-politic or corporate, or any military body organized under the laws of this State; or shall utter, or publish, as true and genuine, or cause to be uttered or published as true and genuine, or shall have in his possession with intent to utter and publish, as true and genuine, any of the above named false, altered, forged, counterfeited, falsely printed, or photographed matter, above specified and described, knowing the same to be false, altered, forged, counterfeited, falsely printed, or photographed, with intent to prejudice, damage, or defraud any person or persons, body-politic or corporate; every person so offending shall be imprisoned in the penitentiary for any space of time not exceeding twenty years, nor less than one year, and pay a fine not exceeding five hundred dollars.

SEC. 146. ***POSSESSION*** of forgers' tools or product, for use in uttering forging matters, with intent to injure, punishable by imprisonment ten years, and fine one thousand dollars.

SEC. 147. ***WORTHLESS BANK NOTES.*** Disposing of, or having in possession to dispose of, punishable by imprisonment one to fifteen years, and fine five hundred dollars.

SEC. 148. ***COUNTERFEIT PLATES.*** Making, or possessing secretly, plates for above matters. Penalty, imprisonment one to fifteen years.

SEC. 149. ***FALSE MARKS.*** Vending same, or goods so marked, with intent to deceive, punishable by fine of one hundred dollars.

SEC. 150. ***COUNTERFEITING COIN, ETC.,*** or altering same; or secreting, keeping, or making, instruments for that purpose. Penalty, imprisonment one to fifteen years, and fine three hundred dollars.

SEC. 152. ***BANK NOTES.*** Knowingly passing or attempting to pass, or bartering or keeping, such false coin or bank note. Penalty, imprisonment one to five years, and fine of five hundred dollars.

PERVERSION OF PUBLIC JUSTICE.

SEC. 155. ***PERJURY.*** Making false oath in a judicial proceeding. Penalty, imprisonment one to fourteen years. Subornation of same, one to ten years.

SEC. 157. ***EXTORTION.*** Public officers receiving unlawful fees. Penalty, fine five hundred dollars, and imprisonment ten days, or both.

SEC. 158. ***USURPATION IN OFFICE.*** Penalty, fine two hundred dollars, or imprisonment on bread and water ten days, or both.

SEC. 159. ***INCITING TO SUITS.*** By judicial or ministerial officers, or attorneys. Penalty, fine of five hundred dollars, and answerable in treble damages.

SEC. 160. ***OPPRESSION IN OFFICE,*** by wilfully and corruptly defrauding or injuring persons, under color of official conduct. Penalty, fine two hundred dollars, and treble damages.

SEC. 161. ***REFUSING AID TO OFFICERS,*** when called on for assistance to arrest or detain offender. Penalty, fine fifty dollars.

SEC. 162. ***SUFFERING ESCAPE*** of criminal, by voluntary negligence, subjects executive officer to fine of five hundred dollars, or imprisonment ten days, or both.

SEC. 163. ***ASSISTING SAME.*** Penalty, fine five hundred dollars, or imprisonment thirty days, or both.

SEC. 164. ***BRIBING JURORS,*** or witnesses. Penalty, fine five hundred dollars, and imprisonment thirty days.

SEC. 165. ***RECEIVING BRIBE*** by juror or witness. Penalty, same as above.

SEC. 166. ***BRIBERY,*** to effect escape of prisoner. Penalty, fine twenty-five to five hundred dollars.

SEC. 167. ***JAIL.*** Suffered to become unclean and unhealthy, punishable by fine of one hundred dollars.

SEC. 168. ***FAILURE TO ARREST,*** in felony. Fine five hundred dollars, and imprisonment ten days, or both; in misdemeanor, fine one hundred dollars, or imprisonment ten days, or both; and forfeiture of office in either case.

SEC. 172. ***LENIENCY TO PRISONERS,*** in violation of sentence. Penalty, fine one hundred dollars.

SEC. 173. ***RESCUING CONVICTED FELON.*** Penalty, imprisonment one to fourteen years, or for the time of convict's sentence.

SEC. 174. ***TOOLS OF ESCAPE,*** furnished to convict or prisoner. Penalty, fine five hundred dollars, or imprisonment three months, or both.

SEC. 175. ***BRIBERY,*** of public officer, legislative, executive or judicial. Penalty, imprisonment five years. Attempting same, fine five hundred dollars.

SEC. 177. ***COMPOUNDING CRIMES.*** Fine in double the sum offered or taken therefor, and debarred recovering the thing from the taker.

SEC. 178. ***CONSPIRACY*** to procure a prosecution for crime. Penalty, fine one thousand dollars, and imprisonment (where?) one year.

SEC. 179. ***MUTILATING RECORDS.*** Maliciously altering, destroying, or concealing a public record or any paper officially filed. Penalty, fine three hundred dollars, or imprisonment three months, or both.

SEC. 180. ***NEGLECT OR MALFEASANCE OF CERTAIN OFFICERS.*** Any Magistrate, Clerk of the Court, Sheriff, Constable, or other officer mentioned in chapter fifty of this code, who shall neglect or refuse to perform any duty required of such officer by any provision of said chapter fifty, or any Clerk, Sheriff, Coroner, Constable, County Commissioner, Justice of the Peace, Recorder, County Surveyor, Prosecuting or District Attorney, or any ministerial officer, who shall be guilty of any palpable omission of duty, or who shall wilfully or corruptly be guilty of malfeasance or partially in the discharge of his official duties, shall be fined in a sum not exceeding two hundred dollars, and the Court shall have power to add to the judgment that any officer so convicted shall be removed from office; *Provided,* That the removal of a Clerk of the District Court from office shall not remove such officer from the office of the County Clerk but in such case the Judge shall have power to appoint such Clerk of the District Court until the next general election of county officers. The Court shall have power, whenever any Clerk of the District or the Supreme Court, or the District or Prosecuting Attorney, shall be presented or indicted, to appoint for that occasion a Prosecuting Attorney or Clerk, as the case may require, who shall thereby be invested, in relation to such presentment or indictment, with all the powers of Clerk or Prosecuting Attorney. It shall be the duty of the Court, when the judgment shall extend to removal from office, to cause immediate notice of such removal to be given to the proper department, in order that the vacancy thus occasioned may be filled.

OFFENCES AGAINST ELECTION LAWS.

SEC. 182. **VOTING OUT OF PRECINCT,** contrary to law. Penalty, fine five hundred dollars, and imprisonment six months.

SEC. 183. **VOTING OUT OF COUNTY,** where elector has no legal residence. Penalty, imprisonment three years.

SEC. 184. **VOTING MORE THAN ONCE,** at same election. Penalty, imprisonment five years.

SEC. 185. **VOTING BY RESIDENT OF ANOTHER STATE.** Penalty, imprisonment five years.

SEC. 186. **FOR OTHER DISQUALIFICATIONS,** imposed by law. Penalty, imprisonment six months.

SEC. 187. **ASSISTING,** or advising illegal voting. Penalty, fine five hundred dollars, and imprisonment six months.

SEC. 189. **BRIBERY AND THREATS,** to influence electors to vote different from their inclination, or to deter them. Penalty same as above.

SEC. 190. **DECEIVING** illiterate electors. Penalty, imprisonment three years.

SEC. 191. **MISCONDUCT** of election officers; wilful and corrupt malfeasance or misfeasance of Judges and Clerks, in discharge of duties. Penalty, fine $1,000, and imprisonment six months.

SEC. 192. **FRAUDULENT BALLOTS.** Depositing. Penalty, imprisonment three years.

SEC. 193. **BY JUDGE,** or permitting same to be deposited or counted. Penalty, imprisonment three years.

SEC. 194. **"DOCTORING" POLL BOOKS.** Penalty, same as above. Having possession of same, with intent to falsify the election, same penalty as above.

SEC. 196. **FRAUDULENT ACQUISITION,** by force or fraud, or ballot box or ballots, before the canvass. Penalty, same as above.

SEC. 197. **DESTROYING BOX, BALLOTS,** or poll books. Penalty, imprisonment five years.

SEC. 198. **ATTEMPTING** either of above offenses. Penalty, imprisonment three years.

SEC. 199. **SELLING LIQUORS,** or giving them away, on election day. Penalty, fine $100, or imprisonment thirty days, or both.

OFFENSES AGAINST MARRIAGE, ETC.

SEC. 200. **CONNECTION WITH** insane woman; by a person seventeen years old, is a felony. Penalty, imprisonment three to ten years.

SEC. 201. **BIGAMY.** Penalty, imprisonment one to seven years; *provided*, it shall not apply to anyone whose husband or wife has been wilfully and continuously absent and unheard from for five years.

SEC. 202-3. **INCESTUOUS COHABITATION,** is punishable by imprisonment ten years; and marriage is void.

SEC. 205. **EXPOSURE** and obscene language; by person over fourteen. Penalty, fine $5, and imprisonment ten days.

SEC. 207. **SEDUCTION,** is intercourse of a person over eighteen with a female under eighteen, under promise of marriage. Penalty, imprisonment five years; or in county jail six months. The female's evidence must have corroboration, as in perjury.

SEC. 208. *ADULTERY.* Penalty, fine and imprisonment of man; and imprisonment of woman in county jail one year.

SEC. 209. *FORNICATION.* Penalty, fine $100, and imprisonment six months.

SEC. 210. *RENTING BROTHEL,* knowingly. Penalty, fine $100, or imprisonment thirty days, or both; and lessor may forfeit lease.

SEC. 212. *RAPE.* If any person or persons shall induce, decoy, entice, hire, engage, employ, or compel any female under eighteen years of age; or if any person or persons shall cause, by compulsion or otherwise, any female over eighteen years of age, against her will, to have illicit carnal intercourse with any person other than the person so inducing, decoying, enticing, hiring, engaging, employing, or causing such female to have such illicit carnal intercourse; or if any person or persons shall knowingly permit or allow any other person to have illicit intercourse with any female of good repute for chastity, at the house, residence, or upon the premises owned or controlled by such person, the person or persons so offending shall be imprisoned in the penitentiary for not more than five years.

GAMING, BETTING AND LOTTERIES.

SEC. 214. *PLAYING AT GAMES* for money or property, or betting thereon. Penalty, for first conviction, fine $300, and imprisonment one year; for subsequent offense, fine $500, and imprisonment two years; and wife, guardian, heir, administrator or creditor of losing party may recover loss of any party to the game, or the landlord.

SEC. 215. *KEEPING GAMING FIXTURES* or implements. Penalty, fine $500, and imprisonment two years.

SEC. 216. *ON PRIVATE PREMISES,* owner suffering same. Penalty, fine one hundred dollars.

SEC. 217. *IN PUBLIC HOUSES.* Penalty, same as above.

SEC. 219. *COMMON GAMBLERS.* Fine one hundred dollars, and imprisonment three months.

SEC. 220. *ENTICING MINORS.* Penalty, fine one hundred dollars and imprisonment three months.

SEC. 222. *SAME* in billiard saloon. Keeper fineable in fifty dollars.

SEC. 223. *BETTING ON ELECTIONS.* Penalty, fine to the amount hazarded, not exceeding one hundred dollars.

SEC. 224. *LOTTERIES.* Penalty, fine in discretion of Court, not exceeding one hundred dollars.

SEC. 225. *SELLING LOTTERY TICKETS.* Penalty, fine five hundred dollars or imprisonment six months, or both; adverting same, fine one hundred dollars.

OFFENCES AGAINST HEALTH.

SEC. 227. *UNWHOLESOME* provisions; selling same; penalty, fine fifty dollars.

SEC. 228. *"STAGNANT WATER;* manifestly injurious to public health and safety;" penalty, fine in discretion of Court, not more than five hundred dollars, and Court may order nuisance removed.

SEC. 229. *PALLUTING WELLS,* springs and streams; penalty, fine two to forty dollars.

SEC. 230. *CREATING NUISANCE.* If any person or persons shall put the carcass of any dead animal, or the offals from any slaughter house or butcher's establishment, packing house, or fish house, or any spoiled meats, or spoiled fish, or any putrid animal substance, or the contents of any privy vault, upon or into any river, bay, creek, pond, canal, road, street, alley, lot, field, meadow, public ground, market space, or common, or if the owner or owners, occupant or occupants thereof shall knowingly permit the same to remain in any of the aforesaid situations, to the annoyance of the citizens of this State, or any of them, or shall neglect or refuse to remove or abate the nuisance occasioned thereby, within twenty-four hours after knowing of the existence of such nuisance upon any of the above described premises, owned or occupied by him, her or them, or after notice thereof in writing, from the Street Commissioner, Supervisor, Constable, any Trustee, or Health Officer of any city or precinct in which such nuisance shall exist, every such person shall be fined in any sum not less than one nor more than fifty dollars. And if said nuisance be not abated within twenty-four hours thereafter, it shall be deemed a second offense against the provisions of this section, and every like neglect of each twenty-four hours thereafter, shall be considered an additional offense against the provisions of this section.

SEC. 244. *DISINTERRING DEAD BODIES;* penalty, fine five hundred dollars, except those of criminals ordered delivered, by authority.

ACCESSORIES IN FELONY.

SECTION 1. *AIDING AND ABETTING FELONY.* If any person shall, aid, abet, or procure any other person to commit any felony, every person so offending shall, upon conviction thereof, be imprisoned in the penitentiary for any time between the respective periods for which the principal offenders could be imprisoned for the principal offense; or, if such principal offender would on conviction be punishable with death, or be imprisoned for life, then such aider, abettor, or procurer, shall be punished with death, or be imprisoned for life, the same as the principal offender would be.

SEC. 2. *ACCESSORIES AFTER THE FACT.* An accessory after the fact is a person who, after full knowledge that a felony has been committed, conceals it from the magistrate, or harbors and protects the person charged with or found guilty of the crime. Any person found guilty of being an accessory after the fact, shall be imprisoned in the jail of the county for any term not exceeding two years, and fined in a sum not exceeding five hundred dollars, in the discretion of the court, to be regulated by the circumstances of the case and the enormity of the crime.

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PART II.

CODE OF CIVIL PROCEDURE.

[There is much in the Nebraska volume of this code that is "locally inapplicable," in Oklahoma Territory. The following synopsis, therefore, as an abridgment, retains only the essential parts, within the meaning of the Organic Act of Congress.]

SEC. 2. There is but one form of action, called civil actions.

SEC. 5. They can only be commenced within the following times after the respective causes have accrued: *First*, For real property and on mortgages, and official bonds, ten years; *second*, forcible entry and detainer, one year; written contracts and foreign judgments, five years; parol contract and failure of consideration than statutory other than liability, penalty, four years; trespass, replevin, torts and fraud, four years; slander, assault, malicious prosecution, false imprisonment and statute penalty, one year; unenumerated, four years. In cases of disability, and non-residence, time is extended. Limitations of other States adopted; and action is deemed commenced from date of served summons or first publication; part payment or a new promise in writing saves the cause.

SEC. 23. Initials are recognized. Also partnership names; but in suit in partnership name, security for costs shall be given; and individual property may be reached by chancery proceeding.

SECS. 40 to 44. All parties having interests, may join and be joined.

SEC. 46. And new or additional parties may be brought in by order of court or otherwise, and claimants may be required to interplead; also substitution made of real for nominal parties. Also by intervention, through petition filed.

THE COUNTY IN WHICH ACTIONS ARE TO BE BROUGHT.

SEC. 51. Actions for the following causes must be brought in the county in which the subject of the action is situated, except as provided in section fifty-two. *First.* For the recovery of real property or of an estate or interest therein. *Second.* For the partition of real property. *Third.* For the sale of real property under a mortgage, lien or other incumbrance or charge.

SEC. 52. If the real property, the subject of the action, be an entire tract, and situated in two or more counties, or if it consists of separate tracts situated in two or more counties, the action may be brought in any county in which any tract or part thereof is situated, unless it be an action to recover the possession thereof. And if the property be an entire tract, situated in two or more counties, an action to recover the possession thereof may be brought in either of such counties; but if it consists of separate tracts in different counties, the possession of such tracts must be recovered by separate actions brought in the counties where they are situated.

SEC. 53. [**Same—Specific performance.**]—An action to compel the specific performance of a contract of sale of real estate, may be brought in the county where the defendants, or any of them, reside.

SEC. 54. [**Fines—Penalties—Public officers—Official bonds**]—Actions for the following causes must be brought in the county where the cause, or some part thereof, arose: *First.* An action for the recovery of a fine, forfeiture or penalty, imposed by a statute; except that, when it is imposed for an offense committed on a river, or other stream of water, or road which is the boundary of two or more counties, the action may be brought in any county bordering on such river, water-course or road, and opposite to the place where the offense was committed. *Second.* An action against a public officer, for an act done by him in virtue or under color of his office, or for a neglect of his official duty. *Third.* An action on the official bond or undertaking of a public officer.

SEC. 55. [**Against corporations.**]—An action other than one of those mentioned in the first three sections of this title, against a corporation created by the laws of this state, may be brought in the county in which it is situated, or has its principal office or place of business; but if such corporation be an insurance company, the action may be brought in the county where the cause of action, or some part thereof, arose.

SEC. 56. [**Railroad—Stage companies.**]—An action against a railroad company, or an owner of a line of mail stages, or other coaches, for an injury to person or property upon the road or line, or upon a liability as a carrier, may be brought in any county through or into which the said road or line passes.

SEC. 57. [**Turnpike companies.**]—An action other than one of those mentioned in the first three sections of this title, against a turnpike road company, may be brought in any county in which any part of the road lies.

SEC. 58. [**Corporations—Exceptions.**]—The provisions of this title shall not apply in the case of any corporation created by a law of this state, whose charter prescribes a place where alone a suit against such corporation may be brought.

SEC. 59. [**Non-residents.**]—An action other than one of those mentioned in the first three sections of this title, against a non-resident of this state or a foreign corporation, may be brought in any county in which there may be property of, or debts owing to, said defendant, or where said defendant may be found; but if said defendant be a foreign insurance company, the action may be brought in any county where the cause, or some part thereof, arose.

SEC. 60. [**Other actions.**]—Every other action must be brought in the county in which the defendant, or some of the defendants, resides, or may be summoned.

SEC. 61. [**Change of venue.**]—In all cases in which it shall be made to appear to the court that a fair and impartial trial cannot be had in the county where the suit is pending, or when the judge is interested or has been of counsel in the case or subject matter thereof, or is related to either of the parties, or is otherwise disqualified to sit, the court may on application of either party change the place of trial to some adjoining county, wherein such impartial trial can be had; but if the objection be against all the counties of the district, then to the nearest county in the adjoining district. [R. S. 402. Amended, G. S. 532.]

SEC. 61 *a.* [**Same—Proceedings.** —SEC. 3. When an order is made trans-

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SEC. 60. Action against maker and endorser of note may be brought in any county where one of the parties resides or may be summoned. 14 Neb. 213. Section cited and construed. 17 Neb. 560.

The party taking the charge, pays costs thereof; and on final judgment for real estate, a complete record is made in original county.

SEC. 63. Suit is commenced by filing precipe for summons, to be directed to Sheriff; on default, judgment is limited to amount of claim, endorsed on summons.

SEC. 66. Summons will state the return day—second Monday after its date, or third or fourth Monday, when issued to another county; and may be served by any person thereto authorized by the Sheriff, by endorsement thereon, by delivery of a copy to defendant, or leaving it at his usual residence. May be served on President, Mayor, Chairman of Board of Directors, or chief officer of a corporation; or if not found, on Cashier, Treasurer, Secretary or Clerk or Managing Agent; or if none of these be found, by copy left at office. On infants under fourteen, on guardian—over fourteen, on him personally.

CONSTRUCTIVE SERVICE.

SEC. 77. Service may be made by publication in either of the following cases: *First.* In actions brought under the fifty-first, fifty-second, and fifty-third sections of this code, where any or all of the defendants reside out of the State. *Second.* In actions brought to establish or set aside a will, where any or all the defendants reside out of the State. *Third.* In actions brought against a non-resident of this State, or a foreign corporation, having in this State property or debts owing to them, sought to be taken by any of the provisional remedies, or to be appropriated in any way. *Fourth.* In actions which relate to, or the subject of which is, real or personal property in this State, where any defendant has or claims a lien or interest, actual or contingent therein, or the relief demanded consists wholly or partially in excluding him from any interest therein, and such defendant is a non-resident of the State or a foreign corporation. *Fifth.* In all actions where the defendant being a resident of the State has departed therefrom, or from the county of his residence, with intent to delay or defraud his creditors or to avoid the service of a summons, or keeps himself concealed therein with the like intent.

SEC. 78. Before service can be made by publication, an affidavit must be filed, that service of a summons cannot be made within this State, on the defendant of defendants to be served by publication, and that the case is one of those mentioned in the preceding section. When such affidavit is filed the party may proceed to make service by publication.

SEC. 79. The publication must be made four consecutive weeks, in some newspaper printed in the county where the petition is filed, if there be any printed in such county; and if there be not, then in some newspaper printed in the State, of general circulation in that county. It must contain a summary statement of the object and prayer of the petition, mention the court wherein it is filed, and notify the person or persons thus to be served, when they are required to answer.

SEC. 81. Where cause of action arose in the State, and defendant is non-resident, personal service may be made on him outside, and an affidavit of service returned.

SEC. 82. Judgments on newspaper notice may be opened on petition and notice, within five years, by filing full answer and affidavit that during the pend-

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ency of the action he had no actual notice thereof in time to appear in court and make his defense; but the title to any property, the subject of the judgment or order sought to be opened, which by it, or in consequence of it, shall have passed to a purchaser in good faith, shall not be affected by any proceedings under this section, nor shall they affect the title of any property sold before judgment under an attachment. The adverse party, on the hearing of an application to open a judgment or order, as provided by this section, shall be allowed to present counter affidavits, to show that during the pendency of the action the applicant had notice thereof in time to appear in court and make his defense.

SEC. 83. [**Unknown heirs.**]—In actions where it shall be necessary to make the heirs or devisees of any deceased person defendants, and it shall appear by the affidavit of the plaintiff annexed to his petition, that the names of such heirs or devisees, or any of them, and their residences are unknown to the plaintiff, proceedings may be had against such unknown heirs or devisees, without naming them, and the court shall make such order respecting service as may be deemed proper; if service by publication be ordered, the publication shall not be less than four weeks.

SEC. 84. [**Defendants not all served—Proceedings.**]—Where the action is against two or more defendants, and one or more shall have been served, but not all of them, the plaintiff may proceed as follows: *First.* If the action be against defendants jointly indebted upon contract, he may proceed against the defendant served, unless the court otherwise direct. *Second.* If the action be against defendants severally liable, he may, without prejudice to his rights against those not served, proceed against the defendants served in the same manner as if they were the only defendants.

SEC. 85. [**Lis pendens—Notice—Record—Cancellation.**]—When the summons has been served, or publication made, the action is pending, so as to charge third persons with notice of pendency, and while pending, no interest can be acquired by third persons in the subject matter thereof, as against the plaintiff's title; *Provided, however,* That in all actions brought to effect the title to real property, the plaintiff may either at the time of filing his petition or afterwards, file, or in case any defendant sets up an affirmative cause of action, and demands relief which shall affect the title to real estate, may at the time of filing such answer, or any time afterwards, file, with the clerk or register of deeds of each county in which the said real estate thus to be affected, or any part thereof, may be situated, a notice of the pendency of such action, containing the names of the parties, the object of the action, and a description of the property in such county sought to be affected thereby. If the action be for a foreclosure of a mortgage, such notice must contain the date of the mortgage, the parties thereto, and the time and place of recording the same. The clerk or register of deeds of such county shall record notice thus filed and enter the same upon the numerical index of all lands, any part of which is included in the description in said notice, for which he shall be entitled to receive the sum of fifty (50) cents, to be paid by the person filing such notice, and which shall be taxed as a part of the costs in said action. From the time of filing such notice shall the pendency of such action be constructive notice to any purchaser or incumbrancer to be affected thereby, and every person whose conveyance or incumbrance is subsequently executed or subsequently recorded shall be deemed to be a subsequent purchaser or incumbrancer and shall be bound by all proceedings taken in said action after the filing of such notice to the same extent as if he were made a party to the action. The court in which said action was commenced may at any time after the action shall be settled, discontinued or abated on an application of any person aggrieved and on good cause shown, and on such notice as the court may determine, order said notice to be cancelled by the clerk or register of deeds of any county in which said notice may have been filed or recorded. Such cancellation shall be made by an indorsement to that effect on the margin of the record, which shall refer to the order directing the same, for which there is a fee of twenty-five cents.

SEC. 87. Several causes of action, both legal and equitable, may be joined, for trial in the same place, if they affect all the parties; and the only pleadings are: *First*, petition; *second*, answer; *third*, demurrer; *fourth*; reply. The causes of action must be separately stated and numbered. The demurrer must specify objections. Court must allow several petitions filed and separately proceeded with, on sustaining demurrer for misjoinder. The answer may set out any number of defences and counter claims, if separately numbered; and if not pleaded debt cannot afterwards have costs thereon. Set off must be founded on contract; and cross demands may be compensated when equal.

SEC. 110. Reply must be filed by fifth Monday after return day; and all pleadings of fact, must be verified, except by guardians, and when it would subject affiant to prosecution.

SEC. 120. When the affidavit is made by the agent or attorney, it must set forth the reason why it is not made by the party himself. It can be made by the agent or attorney only: *First*. When the facts are within the personal knowledge of the agent or attorney. *Second*. When the plaintiff is an infant, or of unsound mind, or imprisoned. *Third*. When the pleading to be verified is founded upon a written instrument for the payment of money only, and such instrument is in the possession of the agent or attorney. *Fourth*. When the party is not a resident of, or is absent from the county. *Fifth*. When the party is a corporation, in which case it may be made by the attorney, or any officer or agent upon whom a summons could be legally served.

SEC. 129. On written money contracts, a copy must be attached to petition; and redundant, and irrelevant matter may be stricken out.

SEC. 130. Private statutes, referred to by title, may be noticed by Court, and in slander, defendant may prove the truth, in mitigation.

SEC. 138. Variances not regarded unless the opposing party proves he has been deceived thereby.

SEC. 141. Before answer, petition can be amended without leave, on notice. Also, within ten days after demurrer; and if sustained, party may answer, on leave; and Court may allow any amendment at any stage.

SEC. 148. A defendant may be served, on affidavit by the description "real name unknown," and true name afterwards inserted.

SEC. 150. The Court may order actions to be consolidated.

REPLEVIN.

SEC. 182. An order for the delivery of personal property to the plaintiff, shall be made by the Clerk of the Court in which the action is brought, when there shall be filed in his office on affidavit of the plaintiff, his agent or attorney showing: *First*. A description of the property claimed. *Second*. That the plaintiff is the owner of the property, or has a special ownership or interest therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the same. *Third*. That the property is wrongfully detained by the defendant. *Fourth*. That it was not taken in execution on any order or judgment against said plaintiff; or for the payment of any fine, tax or amercement assessed against him, or by virtue of an order of delivery issued under this chapter, or any other mesne or final process issued against him; *Provided*, That such affidavit may omit the first and last clause of this subdivision and in lieu thereof, show that the property was taken in execution on a judgment or order, other than an order of delivery in replevin, and that the same is exempt from such execution or attachment under the laws of this state; *And provided further*, That the provisions of this act shall extend to and apply as well to proceedings in replevin had before justices of the peace. [Amended 1877, 9. Took effect June 1, 1877.]

SEC. 183. [**Order—Contents.**]—The order for the delivery of the property to the plaintiff shall be addressed and delivered to the sheriff. It shall state the names of the parties, the court in which the action is brought, and command the sheriff to take the property, describing it, and deliver it to the plaintiff, and to make return of the order on a day to be named therein.

SEC. 184. [**Same—Returnable.**]—The return day for the order of delivery, when issued at the commencement of the suit, shall be the same as that of the summons; when issued afterwards, it shall be twenty days after it issued.

SEC. 185. [**Same—Execution.**]—The sheriff shall execute the order by taking the property therein mentioned. He shall also deliver a copy of the order to the person charged with the unlawful detention of the property, or leave such copy at his usual place of residence.

SEC. 186. [**Bond.**]—The sheriff, or other officer, shall not deliver to the plaintiff, his agent or attorney, the property so taken, until there has been executed, by one or more sufficient sureties of the plaintiff, a written undertaking to the defendant in at least double the value of the property taken, to the effect that the plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him, *and return the property to the defendant, in case judgment for a return of such property is rendered against him.* The undertaking shall be returned with the order. [Amended to take effect Sept. 1, 1873. G.S. 553.]

SEC. 187. [**Same—Appraisement.**]—For the purpose of fixing the amount of the undertaking, the value of the property taken shall be ascertained by the oath of two or more responsible persons, whom the sheriff or other officer shall swear truly to assess the value thereof.

SEC. 188. [**Same—When given.**]—If the undertaking, required by section one hundred and eighty-six, be not given within twenty-four hours from the taking of the property under said order, the sheriff or other officer shall return the property to the defendant. And if the sheriff or other officer deliver any property so taken to the plaintiff, his agent or attorney, or keep the same from the defendant, without taking such security within the time aforesaid, or if he take insufficient security, he shall be liable to the defendant in damages.

SEC. 189. [**Same—Objections to sureties.**]—The defendant may, within twenty-four hours from the time the undertaking referred to in the preceding section is given by the plaintiff, give notice to the sheriff that he excepts to the sufficiency of the sureties. If he fail to do so, he must be deemed to have waived all objections to them. When the defendant excepts, the sureties must justify upon notice as bail on arrest. The sheriff or other officer shall be responsible for the sufficiency of the sureties, until the objection to them is waived as above provided or until they justify. The property shall be delivered to the plaintiff, when the undertaking, required by section one hundred and eighty-six has been given.

SEC. 190. [**Proceedings in action—Jury—Findings.**]—If the property has been delivered to the plaintiff, and judgment be rendered against him on de-

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SEC. 185. Seizure of property on Sunday not proper. 16 Neb. 651. Failure to serve writ not jurisdictional. 6 Neb. 472. 8 Id. 113. Defects cannot be objected to by special appearance. Id.

SEC. 186. Undertaking omitting italicized words good as far as it goes. 8 Neb. 468.

Sec. 190. Plaintiff cannot, after trial commenced, dismiss without prejudice. 9 Neb. 488. On appearance of defendant and dismissal of action for want of jurisdiction, he cannot afterwards be heard in that action as to his right to property replevied, or on question of damages. 10 Neb. 573. Conversion during pendency of action may be shown as affecting damages. 12 Neb. 392. Right of property and right of possession only can be tried. 16 Neb. 458. See 13 Neb. 42. 15 Id. 510.

murrer, or if he otherwise fail to prosecute his action to final judgment, the court shall, on application of the defendant or his attorney, impannel a jury to inquire into the right of property and right of possession of the defendant to the property taken. If the jury shall be satisfied that said property was the property of the defendant at the commencement of the action, or if they shall find that the defendant was entitled to the possession only of the same at such time, then, and in either case, they shall assess such damages for the defendant as are right and proper; for which, with costs of suit, the court shall render judgment for the defendant.

SEC. 191. [**Same.**]—In all cases, when the property has been delivered to the plaintiff, where the jury shall find upon issue joined, for the defendant, they shall also find whether the defendant had the right of property or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall assess such damages as they think right and proper for the defendant; for which, with costs of suit, the court shall render judgment for the defendant.

SEC. 191 *a*. [**Return of property.**]—SEC. 7. The judgment in the cases mentioned in sections one hundred and ninety, and one hundred and ninety-one, and in section one thousand and forty-one of said code, shall be for a return of the property or the value thereof in case a return cannot be had, or the value of the possession of the same, and for damages for withholding said property, and costs of suit. [Took effect Sept. 1, 1873. G. S. 713.]

SEC. 192. [**Same—Damages.**]—In all cases, when the property has been delivered to the plaintiff, where the jury shall find for the plaintiff, on an issue joined, or on inquiry of damages upon a judgment by default, they shall assess adequate damages to the plaintiff for the illegal detention of the property; for which, with costs of suit, the court shall render judgment for defendant.

SEC. 193. [**Same—Property not returned.**]—When the property claimed has not been taken, or has been returned to the defendant by the sheriff for want of the undertaking required by section one hundred and eighty-six, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking required by section one hundred and eighty-six, the plaintiff shall pay all costs made by taking the same.

SEC. 193 *a*. [**Judgment for defendant on dismissal.**]—That whenever any action in replevin shall be dismissed by the court for irregularities or defects

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SEC. 191. Cited 1 Neb. 209. 13 Id. 511. 15 Id. 42 Damages assessed whatever plea of defendant. 5 Neb. 38, 102. Judgment must conform to verdict. 6 Neb. 225. 9 Id. 29. Measure of damages when property levied on for taxes. 6 Neb. 226. Damages in action by mortgagee against sheriff holding under attachment, is amount called for by writ. 12 Neb. 375. Recoverable on appeal; effect of increase in value of property. Id. 392. Effect of decrease in value of property. 7 Id. 199, 236, 295. Damages may be assessed by court; expenses in caring for property proper item of. 6 Neb. 472. Damages to personal property, in house taken on replevin, not allowed. 13 Neb. 47. Damages are value of property as proved, with interest from date of unlawful taking until first day of term. 7 Neb 156. 12 Id. 456. 18 Id. 583. 20 Id. 24, 35. Measure of damages, where defendant lawfully holds property by virtue of levy under execution. 17 Neb. 402. 19 Id. 583. Jury should be informed which party had possession at time of trial and mode of estimating damages. 9 Neb. 31. Where defendant claims to be the owner of the property, or that the right to the possession thereof is in him, and prays a return of the property or a judgment for its value, proof by the plaintiff that defendant was in the possession of the property at the time of the commencement of the action. *Held*, To be unnecessary. 17 Neb. 521. Value of use of property; depreciation; property in possession of sheriff under execution; damages recoverable. 7 Neb. 199, 200 Verdict should respond to all the issues. 9 Neb. 29. Should pass on question of unlawful detention. 6 Neb. 412. 9 Id. 181. If stated in present tense the error is not prejudicial. Id. Verdict good, after jury discharged, although it does not answer several questions submitted. 6 Neb. 416. Finding stated. *Held*, Not to sustain judgment. 10 Neb. 226. 14 Id. 450. *Held*, Sufficient to sustain judgment. 14 Id. 448.

SEC. 191 *a*. Provisions are mandatory. 7 Neb. 236. Judgment return of property or value in case stated. 9 Neb 220. Judgment must be in alternative. 7 Neb. 201, 236. Unless it is shown by the record that return cannot be had. 13 Neb. 511. If not in alternative before plaintiff can complain, he must show that property is capable of being returned. 10 Neb. 276. If property cannot be returned defendant entitled to value. 7 Neb. 295. Return of property; delivery by mortgagee to satisfy judgment creditor. 12 Neb. 414. Alternative judgment; tender; refusal of defendant to receive property; injunction lies to restrain execution for amount of judgment. 10 Neb. 600. 11 Id. 483. Property may be returned at place where replevied; if portion lost value in money may be tendered. 11 Neb. 481. See 15 Neb. 42.

SEC. 192. Cited 1 Neb. 209. SEC. 193. Cited 1 Neb. 316. 12 Id. 455. 15 Id. 477. 16 Id. 460.

in the proceedings by the plaintiff, judgment may be given in favor of the defendant on proof of the value of the property and amount of damages. [1875, 44.]

SEC. 194. [**Order to several counties.**]—An order may be directed to any other county than the one in which the action is brought, for the delivery of the property claimed. Several orders may issue at the same time, or successively, at the option of the plaintiff; but only one of them shall be taxed in the costs, unless otherwise ordered by the court.

SEC. 195. [**Order—Execution—Power of sheriff.**]—The sheriff or other officer in the execution of the order of delivery, may break open any building or enclosure in which the property claimed, or any part thereof, is concealed; but not until he has been refused an entrance into said building or enclosure and the delivery of the property, after having demanded the same.

SEC. 196. [**Suit on undertaking.**]—No suit shall be instituted on the undertaking given under section one hundred and eighty-six, before an execution issued on a judgment in favor of the defendant in the action shall have been returned, that sufficient property whereon to levy and make the amount of such judgment cannot be found in the county.

SEC. 197. [**Liability of clerk and plaintiff.**]—Any order for the delivery of property issued under section one-hundred and eighty-two, without the affidavit required thereby, shall be set aside at the cost of the clerk issuing the same, and such clerk, as well as the plaintiff, shall also be liable in damages to the party injured.

CHAPTER III.—ATTACHMENT.

SEC. 198. [**When allowed—Grounds.**]—The plaintiff in a civil action for the recovery of money, may, at or after the commencement thereof, have an attachment against the property of the defendant, and upon the grounds herein stated: *First.* When the defendant, or one of several defendants, is a foreign corporation, or a non-resident of this state; or, *Second.* Has absconded with the intent to defraud his creditors; or, *Third.* Has left the county of his residence to avoid the service of a summons; or, *Fourth.* So conceals himself that a summons cannot be served upon him; or, *Fifth.* Is about to remove his property, or a part thereof, out of the jurisdiction of the court, with the intent to defraud his creditors; or, *Sixth.* Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or, *Seventh.* Has property, or rights in action, which he conceals; or, *Eighth.* Has assigned, removed, or disposed of, or is about to dispose of, his property, or a part thereof, with the intent to defraud his creditors; or, *Ninth.* Fraudulently contracted the debt or incurred the obligation for which suit is about to be or has been brought. But an attachment shall not be granted on the ground that the defendant is a foreign corporation, or a non-resident of the state, for any claim other than a debt or demand arising upon contract, judgment, or decree.

SEC. 199. [**Affidavit.**]—An order of attachment shall be made by the clerk of the court in which the action is brought, in any case mentioned in the preceding section, when there is filed in his office an affidavit of the plaintiff, his agent, or attorney, showing: *First.* The nature of the plaintiff's claim. *Second.* That

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SEC. 196. In action on undertaking by one not a nominal party to it, plaintiff's interest must affirmatively appear. 8 Neb. 468. Execution creditors may maintain action if undertaking has been assigned to them by obligee. 14 Neb. 163. Penalty fixes limit to which recovery can be had in suit on. Id. Sureties on appeal bond concluded by judgment. 7 Neb. 294. 9 Id. 46. Subrogation of surety in *supersedeas* to rights of creditor on replevin bond. 11 Neb. 423 Sureties failing to object to form of judgment are bound by it. 8 Neb. 215. But sureties are not liable for value of property unless a return thereof could not be had. 13 Neb. 511.

SEC. 198. Cases where attachment *held* good. 5 Neb. 432. 6 Id. 348, 418. 7 Id. 281. 12 Id. 590. [See however 14 Id. 217.] 15 Id. 18, 313, 400. *Held* bad. 4 Neb. 62. 13 Neb. 4, 267. 15 Id. 215, 542. 14 Id. 460, 496. 16 Id. 91. To justify issuance of writ at least one of the causes of attachment mentioned in the statute must exist. 20 Id. 485. Attachment dissolved by bankruptcy proceedings 10 Neb. 44. See 12 Neb. 350.

SEC. 199. Affidavit sufficient if in language of statute. 2 Neb. 15. 3 Id. 73. 9 Id. 409. But if denied burden of proof rests on plaintiff: Id. 14 Id. 497. Omission of venue, curable by amendment. 5 Neb. 493. 6 Id. 165. Omission of affiant's name in body, not fatal he having signed it at its close. 6 Neb. 165. Is not a pleading admitting of an answer. 6 Neb. 527. Statement that claim is for "damages in not delivering goods purchased," does not authorize issuance of attachment against foreign corporation or non-resident. 14 Neb. 460. Sufficiency of affidavit. 15 Neb. 312. 16 Id. 370. 17 Id. 106. 18 Id. 169. 20 Id. 483. If affidavit contain more than one of the grounds for attachment given in statute, they should be united by the conjunction "and." 18 Neb. 170. Not necessary to set out facts constituting cause of action. 15 Neb. 400. One affidavit only necessary for issuance of successive writs. 15 Neb. 113. Affidavit by attorney. 20 Neb. 324.

it is just. *Third.* The amount which the affiant believes the plaintiff ought to recover. *Fourth.* The existence of some one of the grounds for an attachment enumerated in the preceding section.

SEC. 200. [**Undertaking.**]—When the ground of the attachment is, that the defendant is a foreign corporation, or a non-resident of the state, the order of attachment may be issued without an undertaking. In all other cases, the order of attachment shall not be issued by the clerk until there has been executed in his office, by one or more sufficient sureties of the plaintiff, to be approved by the clerk an undertaking not exceeding double the amount of the plaintiff's claim, to the effect that the plaintiff shall pay the defendant all damages which he may sustain by reason of the attachment, if the order be wrongfully obtained.

SEC. 201. [**Order—Requirements.**]—The order of attachment shall be directed and delivered to the sheriff. It shall require him to attach the lands, tenements, goods, chattels, stocks, or interests in stocks, rights, credits, moneys, and effects of the defendant in his county not exempt by law from being applied to the payment of the plaintiff's claim, or so much thereof as will satisfy the plaintiff's claim, to be stated in the order as in the affidavit, and the probable costs of the action, not exceeding fifty dollars.

SEC. 202. [**Same—To several counties.**]—Orders of attachment may be issued to the sheriff of different counties; and several of them may, at the option of the plaintiff, be issued at the same time, or in succession; but such only as have been executed shall be taxed in the costs, unless otherwise directed by the court.

SEC. 203. [**Same—Returnable.**]—The return day of the order of attachment, when issued at the commencement of the action, shall be the same as that of the summons; when issued afterwards, it shall be twenty days after it is issued.

EXECUTION AND RETURN.

SEC. 204. [**Several orders, how executed.**]—When there are several orders of attachment against the same defendant, they shall be executed in the order in which they are received by the sheriff.

SEC. 205. [**Duty of sheriff—Appraisement.**]—The order of attachment shall be executed by the sheriff without delay. He shall go to the place where the defendant's property may be found, and there in the presence of two residents of the county, declare that by virtue of said order he attaches said property at the suit of such plaintiff; and the officer, with the said residents, who shall be first sworn or affirmed by the officer, shall make a true inventory and appraisement of all the property attached, which shall be signed by the officer and residents, and returned with the order. Where the property attached is real property, the officer shall leave with the occupant thereof, or, if there be no occupant, in a conspicuous place thereon, a copy of the order. Where it is personal property, and accessible, he shall take the same into his custody, and hold it subject to the order of the court.

SEC. 206. [**Same—Bond.**]—The sheriff shall deliver the property attached to the person in whose possession it was found, upon the execution by such person, in the presence of the sheriff, of an undertaking to the plaintiff, with one or more sufficient sureties, resident in the county, to the effect that the parties to the same are bound in double the appraised value thereof, that the property or its appraised value in money shall be forthcoming to answer the judgment of the court in th action; but if it shall appear to the court that any part of said property has been lost or destroyed by unavoidable accident, the value thereof shall be remitted t the person so bound.

S[illegible] 200. Liability of sureties. 1 Neb. 128. Action. 9 Neb 471 [illegible] 9 Neb. [illegible] Damages. 12 Neb 230. Undertaking not required when defendant is non-resident. 8 Neb. 194 [illegible] Undertaking signed by plaintiff, as principal, the firm or partnership as surety [illegible]

[illegible]

[illegible]

[illegible]

[illegible]

SEC. 207. Garnishee having property of debtor, to be brought in on affidavit and notice; and if several attachments, one appraisement is sufficient; and a consignee in possession is not affected by the attachment.

SEC. 210. Where the property is under attachment, it shall be attached under subsequent orders as follows: *First.* If it be real property, it shall be attached in the manner prescribed in section two hundred and five. *Second.* If it be personal property, it shall be attached as in the hands of the officer, and subject to any previous attachment. *Third.* If the same person or corporation be made a garnishee, a copy of the order and notice shall be left with him, in the manner prescribed in section two hundred and seven.

SEC. 213. The court may appoint a receiver, and fix amount of bond, who shall take the property and proceed to collect and settle. He shall notify debtors, and after service thereof, they are liable to plaintiff. If no receiver is appointed, the Sheriff has all his powers, duties and responsibility.

SEC. 219. On bond given to Court Clerk or Sheriff, by defendant, property and garnishee are discharged.

SEC. 222. Garnishee may pay money to Sheriff and be allowed his costs.

SEC. 225. Contumacious garnishee may be prosecuted to judgment, as in ordinary actions, and shall pay costs, if action against attachment defendant has been determined

SEC. 246. Same—Proceedings. The summons shall be served as a summons in an original action is served; the said persons or corporations so summoned shall be liable to the judgment creditor in said execution for all property, moneys and credits in his, its or their hands, or due from him, it or them to the judgment debtor in said execution, at the time of, and which may come into his, its or their hands or control, after the service of said summons.

SEC. 247. Irregularities not fatal. No proceedings against such garnishee or garnishees shall be quashed, or such garnishee or garnishees discharged, by reason of any informality or irregularity, merely, of the affidavit, or summons provided for in this article.

SEC. 248. Disposition of property. In cases where the garnishee, in answering such interrogatories, shall disclose that he has property in his possession, or under his control, belonging to the defendants or defendants in execution, the Court shall order the same to be taken and sold by the officers upon execution, as in other cases.

SEC. 249. Payment of money. In case where the garnishee, in answering such interrogatories, shall disclose that he is indebted to the defendant in execution the Court shall order the garnishee to pay over the amount [illegible] due from the said garnishee to the defendant in execution, which amount [illegible] be collected by execution, as in other cases, as near as [illegible] amount, when paid or collected, shall be [illegible] on the [illegible] and the garnishee shall be credited for the amount [illegible] name as such receiver; but in such action no right of defense shall be impaired or affected.

Sec. 215. [**Same—Notice to debtors.**]—Such receiver shall forthwith give notice of his appointment to the persons indebted to the defendant in attachment. The notice shall be written or printed, and shall be served on the debtor or debtors, by copy personally, or by copy left at the residence; and from the date of such service, the debtors shall stand liable to the plaintiff in attachment for the amount of moneys and credits in their hands, or due from them to the defendant in attachment, and shall account therefor to the receiver.

Sec. 216. [**Same—Report.**]—Such receiver shall, when required, report his proceedings to the court, and hold all moneys collected by him, and property which may come into his hands, subject to the order of the court.

Sec. 217. [**Sheriff—Act as receiver.**]—Where a receiver is not appointed by the court or a judge thereof, as provided in section two hundred and thirteen, the sheriff or other officer attaching the property shall have all the powers and perform all the duties of a receiver appointed by the court or a judge, and may, if necessary, commence and maintain actions in his own name as such officer. He may be required to give security, other than his official undertaking.

Sec. 218. [**Preservation of property—Sale.**]—The court shall make proper orders for the preservation of the property during the pendency of the suit. It may direct the sale of property when, because of its perishable nature, or the costs of keeping it, a sale will be for the benefit of the parties. In vacation, such sale may be ordered by the judge of the court. The sale shall be public, after such advertisement as is prescribed for the sale of like property on execution, and shall be made in such manner, and upon such terms of credit, with security, as the court or judge, having regard to the probable duration of the action, may direct. The proceeds, if collected by the sheriff, with all the moneys received by him from garnishees, shall be held and paid over by him, under the same requirements and responsibilities of himself and sureties as are provided in respect to money deposited in lieu of bail.

PROCEEDINGS UPON ATTACHMENT.

Sec. 219. [**Attachment—Discharge—Bond.**]—If the defendant, or any other person on his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties resident in the county, to be approved by the court, in double the amount of the plaintiff's claim as stated in his affidavit, to the effect that the defendant shall perform the judgment of the court, the attachment in such action shall be discharged, and restitution made of any property taken under it, or the proceeds thereof. Such undertaking shall also discharge the liability of a garnishee in such action for any property of the defendant in his hands.

Sec. 220. [**Same—Undertaking.**]—The undertaking mentioned in the last section, may, in vacation, be executed in the presence of the sheriff having the order of attachment in his hands, or, after the return of the order, before the clerk, with the same effect as if executed in court; the sureties in either case to be approved by the officer before whom the undertaking is executed.

Sec. 221. [**Garnishee—Appearance—Answer—Fees.**]—The garnishee shall appear as follows: If the order of attachment be returned during a term of court, he shall appear at that term; if the order be returned during vacation, he shall appear at the term next after its return. He shall appear and answer under oath all the questions put to him touching the property of every description and credits of the defendant in his possession or under his control, and he shall disclose truly the amount owing by him to the defendant whether due or not, and in case of a corporation, any stock therein held by or for the benefit of the de-

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Sec. 218 12 Neb 347. Sec. 219. 9 Neb. 408. 15 Id. 15. Sec. 221. 15 Neb. 394. 16 Id. 494. 18 Id. 304.

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INJUNCTION.

SEC. 252. Injunctions may be granted upon verified petition, or in pending actions, by Judges of Courts of Record, including Probate Judge; but not against a party who has answered, until he has notice. Bond must be first given to the acceptance of the Clerk, unless allowed by special statute.

SEC. 256. If allowed on notice, or at the commencement of action, the order is sufficient, and writ need not issue.

SEC. 258. It binds the party from time of notice of order and delivery of bond; and a second application is not allowed after a refusal or by an inferior court.

SEC. 261. Additional security may be required when deemed necessary: If allowed without notice a motion will lie to dissolve it.

RECEIVERS.

SEC. 266. A receiver may be appointed by the Supreme Court, or the District Court, or by the Judge of either, in the following cases: *First.* In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property of fund to his claim, or between partners or others jointly owning or interested in any property or fund, on the application of any party to the suit, when the property or fund is in danger of being lost, removed or materially injured. *Second.* In an action for the foreclosure of a mortgage, when the mortgaged property is in danger of being lost, removed or materially injured, or is probably insufficient to discharge the mortgage debt. *Third.* After judgment, or decree to carry the same into execution, or to dispose of the property according to the decree or judgment, or to preserve it during the pendency of an appeal. *Fourth.* In all cases provided for by special statutes. *Fifth.* In all other cases where receivers have heretofore been appointed by the usages of courts of equity.

SEC. 267. No receiver shall be appointed except in a suit actually commenced and pending, and after notice to all parties to be affected thereby, of the time and place of the application, the names of the proposed receiver and of his proposed sureties, and of the proposed sureties of the applicant. Such notice shall state upon what papers the application is based, and be served upon the adverse party, or his solicitor, at least five days before the proposed hearing, and one additional day for every thirty miles of travel from the place of serving the notice to the place where the application is to be made, by the usually traveled route, or shall be published in the same manner as notices of the pendency of suits to non-resident defendants.

SEC. 268. If hazardous delay occur, the Sheriff may take possession.

SEC. 269. Applicant and receiver shall both give bonds, for benefit of any party to the suit. If not prayed for in original petition, a supplemental petition shall be filed.

SEC. 271. No interested party shall be appointed, and the order may be resisted on hearing of application, by any person in interest.

SEC. 272. Every order appointing a receiver shall contain special directions in respect to his powers and duties, and upon application of any party to the suit, after due notice thereof, such further directions may be made in that behalf by the Court of Judge as may in the further progress of the cause become proper.

SEC. 275. The court has power to make all necessary orders respecting the possession or distribution of the property; and an appeal lies therefrom. It may also punish for contempt.

TRIAL.

SEC. 280. Issues of law must be tried by the Court, unless referred as provided in section two hundred and ninety-eight. Issues of fact arising in actions for the recovery of money, or of specific, real or personal property, shall be tried by a jury, unless a jury trial is waived, or a reference be ordered as hereinafter provided.

SEC. 281. All other issues of fact shall be tried by the Court, subject to its power to order any issue or issues to be tried by a jury, or referred as provided in this code.

SEC. 283. Instructions to the jury shall be given in writing if either party require it; and the court may give a second charge after the argument.

SEC. 284. The jury may view the property in controversy, or place in dispute.

SEC. 286. If jury separate before verdict, the court shall admonish them, etc.

SEC. 293. In every action for the recovery of money only, or specific real property, the jury, in their discretion, may render a general or special verdict. In all other cases the Court may direct the jury to find a special verdict in writing, upon all or any of the issues; and in all cases may instruct them, if they render a general verdict, to find upon particular questions of fact to be stated in writing, and may direct a written finding thereon. The special verdict or finding must be filed with the Clerk and entered on the journal.

SEC. 294. When the special findings of facts is inconsistent with the general verdict, the former controls the latter, and the Court may give judgment accordingly.

SEC. 297. On trial by the court, its finding will be general, unless either party request separate findings of law and fact in writing.

REFEREES.

SEC. 298. Issues may be referred, on consent, either written or entered in the cause; or by order of the court, without consent, *first*, to examine accounts; *second*, for stating any account necessary to judgment; *third*, when an outside question is raised on motion.

SEC. 300. The trial before referees is conducted in the same manner as a trial by the court. They have the same power to summon and enforce the attendance of witnesses, to administer all necessary oaths in the trial of the case, and to grant adjournments, as the court upon such trial. They must state the facts found and the conclusions of law, separately, and their decision must be given, and may be excepted to and reviewed in like manner. The report of the referees upon the whole issue, stands as the decision of the court, and judgment may be entered thereon in the same manner as if the action had been tried by the Court. When the reference is to report the facts, the report has the effect of a special verdict.

SEC. 301. In all cases of reference, the parties, except when an infant may be a party, may agree upon a suitable person or persons, not exceeding three, and the reference shall be ordered accordingly; and, if the parties do not agree, the court shall appoint one or more referees, not exceeding three, who shall be free from exception.

SEC. 304. A Judge may make the order when the parties agree.

SEC. 305. The pay of referees is fixed by the court, and taxed as costs.

EXCEPTIONS.

SEC. 311. When the ground of objection is not carried on the record, it must be taken in writing within fifteen days, and submitted to the other party; who may propose amendments within ten days after to the Judge, who shall settle it within five days; and time may be extended forty days.

Sec. 312. [**Disregarded, when.**]—No exception shall be regarded, unless it is material, and prejudicial to the substantial rights of the party excepting.

Sec. 313. [**Withdrawal from files.**]—Exceptions taken to the decision of any court of record may, by leave of such court, be withdrawn from the files by the party taking the same, at any time before proceedings in error are commenced, and before the exceptions are recorded.

NEW TRIAL.

Sec. 314. [**Defined—Grounds for allowance.**]—A new trial is a re-examination in the same court of an issue of fact after a verdict by a jury, report of a referee, or a decision by the court. The former verdict, report or decision shall be vacated, and a new trial granted on the application of the party aggrieved, for any of the following causes affecting materially the substantial rights of such party: *First.* Irregularity in the proceedings of the court, jury, referee or prevailing party, or any order of the court, or referee, or abuse of discretion, by which the party was prevented from having a fair trial. *Second.* Misconduct of the jury or prevailing party. *Third.* Accident or surprise, which ordinary prudence could not have guarded against. *Fourth.* Excessive damages, appearing to have been given under the influence of passion or prejudice. *Fifth.* Error in the assessment of the amount of recovery, whether too large or too small, where the action is upon a contract, or for the injury or detention of property. *Sixth.* That the verdict, report or decision is not sustained by sufficient evidence, or is contrary to law. *Seventh.* Newly discovered evidence, material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial. *Eighth.* Error of law occuring at the trial, and excepted to by the party making the application.

Sec. 315. [**Not granted—Smallness of damages.**]—A new trial shall not be granted on account of the smallness of damages in an action for an injury to the person or reputation, nor any other action where the damages shall equal the actual pecuniary injury sustained.

Sec. 316. [**Application for, when made.**]—The application for a new trial must be made at the term the verdict, report or decision is rendered, and, except for the cause of newly discovered evidence material for the party applying, which he could not with reasonable diligence have discovered and produced at the trial, shall be within three days after the verdict or decision was rendered, unless unavoidably prevented.

Sec. 317. [**Same—Upon written motion.**]—The application must be by motion upon written grounds, filed at the time of making the motion. It shall be sufficient however in assigning the grounds of the motion to assign the same in the language of the statute and without further or other particularity. The causes enumerated in subdivisions 2, 3, and 7, of section 314, must be sustained

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Sec. 314. Discretion of court. 13 Neb. 373. 20 Id. 372. Jurisdiction of supreme court. 6 Neb. 253. Granting of new trial not interfered with. 15 Neb. 226. Grounds for do not embrace plea in abatement. 15 Neb 212. New trial granted under particular state of facts 4 Neb. 111. 5 Id 477. 7 Id. 288. 8 Id. 389. 9 Id. 395, 526. 10 Id 452. 12 Id. 116. 6 Id. 309. 15 Id. 47, 331. 17 Id. 51, 72, 171. 19 Id. 527, 396. 20 Id. 514. Granted when jury disregard instructions or evidence. 2 Neb. 342. 12 Id. 599. Not granted on ground of newly discovered evidence. 3 Neb. 165. 8 Id. 389. 13 Id. 397, 438. Or when such evidence is cumulative. 7 Neb. 224. 14 Id. 389. 15 Id. 222. 16 Id. 510. Not granted for admission of immaterial evidence. 9 Neb. 181. Or illegal testimony. 7 Neb. 353. Or overruling motion for re-taxation of costs. 14 Neb. 475. Nor while verdict remains in force. 15 Neb. 42. Not granted in cases stated. 7 Neb. 58. 6 Id. 490. 4 Id. 581. 12 Id. 6, 492. 13 Id. 395. 14 Id. 192, 581, 603. 17 Id. 448. 18 Id. 98. Motion for new trial necessary and errors specifically pointed out, assignments being definite. 1 Neb. 398. 3 Id. 117. 5 Id. 356. 8 Id. 387. 13 Id. 68. General assignment sufficient when errors appear from record. 8 Neb. 388. Where motion is made for reasons which would not otherwise be apparent from the record, they should be incorporated in a bill of exceptions. 15 Neb. 226. Motion must include objection to evidence. 13 Neb. 491.

Sec. 315. Cited 1 Neb. 168.

Sec. 316. Motion filed out of term of no avail. 3 Neb. 446. 6 Neb. 532. Mere neglect not same as "unavoidably prevented." 15 Neb. 621.

Sec. 317. Instructions not considered under general assignment. 15 Neb. 23, 129. Motion indivisible, and when made by two parties if it cannot be allowed as to both it will be overruled as to both. 15 Neb. 423. 16 Id. 30. 17 Id. 666. 19 Id. 745. Motion must be made in the terms in which it may be allowed. 20 Neb. 115. Motion not necessary to obtain review of equity case on appeal. 12 Neb. 211. Nor in a cause taken on error from justice of the peace. 9 Neb. 504. Nor where no trial has been had. 13 Neb. 256. Nor to obtain review of ruling on plea in abatement. 15 Neb. 212.

by affidavits showing their truth, and may be controverted by affidavits. [Amended Mar. 1. Took effect June 1, 1881. Laws p. 201.]

SEC. 318. [**Newly discovered grounds.**]—Where the grounds for a new trial could not, with reasonable diligence, have been discovered before, but are discovered after the term at which the verdict, report of referee, or decision was rendered or made, the application may be made by petition filed as in other cases; on which a summons shall issue, be returnable and served, or publication made, as prescribed in section seventy-nine. The facts stated in the petition shall be considered as denied without answer, and if the service shall be complete in vacation, the case shall be heard and summarily decided at the ensuing term. The case shall be placed on the trial docket, and the witnesses shall be examined in open court, or their depositions taken as in other cases, but no such petition shall be filed more than one year after the final judgment was rendered.

GENERAL PROVISIONS.

SEC. 319. [**Rate of damages.**]—Whenever damages are recoverable, the plaintiff may claim and recover any rate of damages to which he may be entitled for the cause of action established.

SEC. 320. [**Provisions applicable—Trial by court or jury.**]—The provisions of this title respecting trials by jury, apply, so far as they are in their nature applicable, to trials by the court.

TIME OF TRIAL.

SEC. 321. [**Clerk's books.**]—The clerk of the district court shall keep at least eight books, to be called the appearance docket, the trial docket, the journal, the complete record, the execution docket, the fee book, the general index, and the judgment record. [Amended to take effect Sept. 1, 1873. G. S. 579, 713.]

SEC. 322. [**Same—Entries.**]—On the appearance docket, he shall enter all actions in the order in which they were brought, the date of the summons, the time of the return thereof by the officer, and his return thereon, the time of filing the petition, and all subsequent pleadings. On the general index he shall enter the names of the parties to every suit, both direct and inverse, with the page and book where all proceedings in such action may be found. The judgment record shall contain the judgment debtor and the judgment creditor, arranged alphabetically, the date of the judgment, the amount of the same, and the amount of costs, with the page and book where the same may be found. Transcripts of judgments from justices of the peace, or courts of probate, filed in the district court shall be entered upon said judgment record; and whenever any judgment is paid off and discharged, the clerk shall enter such fact upon the judgment record in a column provided for that purpose. [Id.]

SEC. 323. [**Trial docket—Judgment by default—Frivolous demurrer.**]—The trial docket shall be made out by the clerk of the court at least twelve days before the first day of each term of the court; and the actions shall be set for particular days in the order in which the issues were made up, whether of law or of fact, and so arranged that the cases set for each day shall be tried as nearly as may be on that day. For the purpose of arranging said docket, an issue shall be considered as made up when either party is in default of a pleading. If the defendant fails to answer or demur, the cause, for the purpose of this section shall be deemed to be at issue upon questions of fact, but in every such case the plaintiff may move for and take such judgment as he is entitled to, on the defendant's default, on or after the day on which said action shall be set for trial. No witnesses shall be subpœnaed in any case while the cause stands upon issue of law; and whenever the court shall regard the demurrer in any case as frivolous,

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SEC. 318. 7 Neb. 189. 17 Id. 69, 450. 19 Id. 646. 20 Id. 315.
SEC. 321. 19 Neb. 106, 306.
SEC. 322. 7 Neb. 171. 10 Id. 524. 19 Id. 306.

and put in for delay only, no leave to answer or reply shall be given, unless upon payment of all costs then accrued in the action; *Provided*, That when the number of actions to be docketed shall exceed three hundred the judge or judges of the district court for the county may by rule or order classify them in such manner as they may deem expedient, and cause them to be placed according to such classification upon different dockets; and the respective dockets may be proceeded with and causes thereon be tried, heard or otherwise disposed of, concurrently by one or more of the judges; and provision may be made by rule of court that issues of fact shall not be for trial at any term when the number of pending actions shall exceed three hundred, except upon such previous notice of trial as may be prescribed thereby. [Amended 1887, chap. 94. Took effect April 4, 1887.]

SEC. 324. [**Cases tried in order.**]—The trial of an issue of fact, and the assessment of damages in any case, shall be in the order in which they are placed on the trial docket, unless, by consent of the parties, or the order of the court, they are continued, or placed at the heel of the docket, or temporarily postponed. The time of hearing all other cases shall be in the order in which they are placed on the docket, unless the court in its discretion shall otherwise direct. The court may in its discretion hear at any time a motion; and may by rule prescribe the time for hearing motions, and provide for dismissing actions without prejudice for want of prosecution. [Id.]

SECS. 325–326. [**Repealed. Laws 1867, 12th sess. ty., page 7.**]

SEC. 327. [**Bar docket.**]—The clerk shall make out a copy of the trial docket and other dockets, if any, for the use of the bar before the first day of the term of court. [Amended 1887, chap. 94.]

SEC. 327 *a*. [**Same.**]—The clerk shall make out a copy of the dockets for the use of the bar before the first day of the term of court. [Id.]

TITLE X.—EVIDENCE.

COMPETENCY OF WITNESSES.

SEC. 328. [**Witnesses—Competent—Incompetent.**]—Every human being of sufficient capacity to understand the obligation of an oath, is a competent witness in all cases, civil and criminal, except as otherwise herein declared. The following persons shall be incompetent to testify: *First.* Persons of unsound mind at the time of their production. *Second.* Indians and negroes who appear incapable of receiving just impressions of the facts respecting which they are examined, or of relating them intelligently and truly. *Third.* Husband and wife, concerning any communication made by one to the other during marriage, whether called as a witness while that relation subsists or afterward. *Fourth.* An attorney, concerning any communication made to him by his client in that relation or his advice thereon, without the client's consent in open court or in writing produced in court. *Fifth.* A clergyman or priest, concerning any confession made to him in his professional character in the course of discipline enjoined by the church to which he belongs, without the consent of the person making the confession.

SEC. 329. [**Same.**]—No person having a direct legal interest in the result of any civil action or proceeding, when the adverse party is the representative of a deceased person, shall be permitted to testify to any transaction or conversation had between the deceased person and the witness, unless the evidence of the deceased person shall have been taken and read in evidence by the adverse party in regard to such transaction or conversation, or unless such representative shall have introduced a witness who shall have testified in regard to such transaction or conversation, in which case the person having such direct legal interest may be examined in regard to the facts testified to by such

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SEC. 328. Witness must understand obligation of oath. 10 Neb. 399. Intoxication. 1 Neb. 396. "Impressions" and "understanding." 4 Neb. 183. 391. 5 Id. 324. 7 Id. 74. 10 Id. 275. 9 Id. 180. Credibility. 5 Neb. 219 6 Id. 409, 490. 7 Id. 309. 13 Id. 412, 423. 16 Id. 10. "Recollection." 10 Neb. 170. Impeaching. 2 Neb. 348, 359. 6 Id. 316. 9 Id. 457. 15 Id. 573. Examination. 3 Neb. 130. 11 Id. 26. Cross examination. 5 Neb. 183. 7 Id. 87, 341. 10 Id. 388. 13 Id 405. 14 Id. 5. 15 Id. 26. 16 Id. 318, 499, 559. 8 Neb. 158. 15 Neb. 234. Opinion of witness. 6 Neb. 11. 13 Id. 336, 346, 362, 485. 14 Id. 471. 15 Id. 233. Expert witnesses. 14 Neb. 408. 16 Id. 579. 13 Id. 488. Privileged communications. 18 Neb. 582. 19 Id. 414, 533.

SEC. 329. One having direct legal interest in result of cause where adverse party is "representative" of deceased person, incompetent; liability for costs is such interest. 13 Neb. 77. Word "representative" defined. 8 Neb. 150 One precluded from so testifying cannot be rendered competent by [illegible] of his interest during pendency of action [illegible] 210. [illegible] competent in suit by wife. 9 Neb. [illegible] Provision of statute may be waived [illegible] deceased person or such witness, but shall not be permitted to testify in regard to such transaction or conversation.

SEC. 331. Husband and wife may testify for, but not against, each other; and their confidential communications, as such, are inviolate. So, also, with attorneys, surgeons, and preachers; but the right may be waived; and a witness need not criminate himself.

SEC. 345. Writings of deceased persons are *prima facie* evidence, in certain cases.

SEC. 346. Books of account, containing charges by one party against the other, made in the ordinary course of business, are receivable in evidence only under the following circumstances, subject to all just exceptions as to credibility: *First.* The books must show a continuous dealing with persons generally, or several items of charges at different times against the other party, in the same book. *Second.* It must be shown, by the party's oath, or otherwise, that they are his books of original entries. *Third.* It must be shown, in like manner, that the charges were made at or near the time of the transaction therein entered, unless satisfactory reasons appear for not making such proof. *Fourth.* The charges must also be verified by the party or the clerk who made the entries, to the effect that they believe them just and true, or a sufficient reason must be given why the verification is not made.

SEC. 354. A witness cannot be taken out of his county, in a civil case; and may require advance payment of his fee for one day; and failing to attend, without excuse, may be fined five to fifty dollars; and is liable to party for damages.

SEC. 361. Court may order persons in prison to be produced as witnesses; or to testify by deposition, in custody of an officer.

DEPOSITIONS.

SEC. 372. The deposition of any witness may be used only in the following cases: *First.* When the witness does not reside in the county where the action or proceeding is pending, or is sent for trial by change of venue, or is absent therefrom. *Second.* When, from age, infirmity, or imprisonment, the witness is unable to attend the court, or is dead. *Third.* When the testimony is required upon a motion, or in any other case where the oral examination of a witness is not required.

SEC. 376. Person taking deposition must be disinterested, and not a relative or attorney of either party; courts may also issue the usual dedimus; the notice shall name witness; and cross interrogatories may be filed if taken out of State or more than fifty miles away. Notice may be given by publication in certain cases.

SEC. 385. The officer taking the deposition shall annex thereto a certificate showing the following facts: *First.* That the witness was first sworn to testify to the truth, the whole truth, and nothing but the truth. *Second.* That the deposition was reduced to writing by some proper person, (naming him). *Third.* That the deposition was written and subscribed in the presence of the officer certifying thereto. *Fourth.* That the deposition was taken at the time and place specified in the notice.

SEC. 388. Fees are as follows: *Subpoena* or attachment, fifty cents; swearing each witness, five cents; and ten cents per folio; and the deposition may be retained until all fees are paid. Exceptions must be filed and decided before trial.

SEC. 394. Either party may demand inspection of writings to be used; or to have copies thereof

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conceal himself, or in any other manner attempt to avoid being personally served with a subpœna, any sheriff or constable, having the subpœna, may use all necessary and proper means to serve the same, and for that purpose may break into any building or other place where the witness is to be found, having first made known his business and demanded admittance.

Sec. 398. [**Party subpœnaed—Failing to appear.**]—In addition to the above remedies, if a party to a suit in his own right, on being duly subpœnaed, fail to appear and give testimony, the other party may, at his option, have a continuance of the cause as in cases of other witnesses, and at the cost of the delinquent.

Sec. 399. [**Papers produced by rule of court.**]—The supreme or district court may, by rule, require the production of any papers or books which are material to the just determination of any cause pending before it, for the purpose of being inspected and copied by or for the party thus calling for them.

Sec. 400. [**Same—Petition for.**]—The petition for that purpose must state the facts expected to be proved by such books or papers, and that as the petitioner believes, such books and papers are under the control of the party against whom the rule is sought, and must show wherein they are material. The rule shall thereupon be granted to produce the book and papers, or show cause to the contrary, if the court deem such rule expedient and proper.

Sec. 401. [**Same—Failure to obey rule.**]—On failing to obey the rule or show sufficient cause for such failure, the same consequences shall ensue as if the party had failed to appear and testify, when subpœnaed by the party now calling for the books and papers.

Sec. 402. [**Writing called for—When used.**]—Though a writing called for by one party is by the other produced, the party thus calling for it, is not obliged to use it as evidence in the case.

Sec. 403. [**Proof of publication.**]—Publications required by law to be made in a newspaper, may be proved by affidavit of any person having knowledge of the fact, specifying the time when and the paper in which the publication was made, but such affidavit must, for the purposes now contemplated, be made within six months after the last day of publication.

Sec. 404. [**Proof of service.**]—The posting up or service of any notice or other paper required by law, may be proved by the affidavit of any competent witness, attached to a copy of said notice or paper, and made within six months of the time of such posting up.

Sec. 405. [**Proof by affidavit.**]—Any other fact which is required to be shown by affidavit, and which may be required for future use in any action or other proceeding, may be proved by pursuing the course above indicated, as nearly as the circumstances of the case will admit.

Sec. 406. [**Same—Perpetuation.**]—Such proof so made may be perpetuated and preserved for future use by filing the papers above mentioned in the office of the judge of probate, and the original affidavit appended to the notice or paper, if there be one, and if not the affidavit by itself is presumptive evidence of the facts stated therein, but does not preclude other modes of proof now held sufficient.

Sec. 407. [**Field notes or plat of county surveyor.**]—A copy of the field notes of any county surveyor, or a plat made by him, and certified under oath as correct, may be received as evidence to show the shape or dimensions of a tract of land, or any other fact whose ascertainment requires only the exercise of scientific skill or calculation.

Sec. 408. [**Certified copies of records.**]—Duly certified copies of all records and entries or papers belonging to any public office, or by authority of law filed to be kept therein, shall be evidence in all cases of equal credibility with the original records or papers so filed.

Sec. 403. Cited 10 Neb. 77.

Sec. 408. This does not prevent the oral testimony of a witness who saw entries of a public record made, 7 Neb. 337. See also 16 Neb. 452. 19 Id. 346.

SEC. 411. Land Office Receiver's receipts are equivalent to patent, unless patent is produced.

SEC. 415. Justice's transcripts from other States must have Clerk's certificate, that he was a Justice, and his signature genuine.

SEC. 419. Printed laws of Congress, or the States, by authority, are presumptive evidence. Also, printed reports of cases decided.

SEC. 421. On petition filed with Clerk, stating witnesses' names, and interrogatories, evidence may be taken in advance of suit; before person authorized by order, or to take depositions; and applicant pays costs.

SEC. 429. [**Against whom given.**]—Judgment may be given for or against one or more of several plaintiffs, and for or against one or more of several defendants; it may determine the ultimate rights of the parties on either side, as between themselves, and it may grant to the defendant any affirmative relief to which he may be entitled. In an action against several defendants, the court may, in its discretion, render judgment against one or more of them, leaving the action to proceed against the others, whenever a several judgment may be proper. The court may also dismiss the petition with costs, in favor of one or more defendants, in case of unreasonable neglect on the part of the plaintiff to serve the summons on other defendants, or to proceed in the cause against the defendant or defendants served.

SEC. 429 *a.* [**Transcripts from other counties—Effect—Lien—Execution.**]—SEC. 1. That the transcript of a judgment of any district court in this state, may be filed in the office of the clerk of the district court in any county, and such transcript shall be a lien on the property of the debtor in any county in which such transcript is filed, in like manner as in the county where such judgment was rendered, and execution may be issued on judgment obtained by such transcript, as on the original judgment; *Provided,* That such transcript shall at all times be effected and be in the same plight as the original judgment. [1869, 158, G. S. 712.]

SEC. 429 *b.* [**Decree for conveyance—Effect.**]—SEC. 1. When any judgment or decree shall be rendered for a conveyance, release or acquittance, in any court of this state, and the party or parties against whom the judgment or decree shall be rendered, do not comply therewith within the time mentioned in said judgment or decree, such judgment or decree shall have the same operation and effect, and be as available as if the conveyance, release, or acquittance had been executed conformable to such judgment or decree. [1869, 70. G. S. 711.]

SEC. 430. [**Action dismissed without prejudice.**]—An action may be dismissed without prejudice to a future action. *First.* By the plaintiff, before the final submission of the case to the jury, or to the court, where the trial is by the court. *Second.* By the court, where the plaintiff fails to appear on the trial. *Third.* By the court, for want of necessary parties. *Fourth.* By the court, on the application of some of the defendants, where there are others whom the plaintiff fails to prosecute with diligence. *Fifth.* By the court, for disobedience by the plaintiff of an order concerning the proceedings in the action. In all other cases, upon the trial of the action, the decision must be upon the merits.

SEC. 430 *a.* [**Plaintiff may dismiss in vacation.**]—SEC. 1. That the party, plaintiff, in any case pending in the district or supreme court of the state, shall, when no counter-claim or set-off has been filed by the opposite party, have the right in the vacation of any of said courts to dismiss his said action without prejudice, upon payment of costs, which said dismissal shall be, by the clerk of

JUDGMENTS.

SEC. 488. Complete record is not to be made where there has been no trial on the merits; or where the parties so agree.

SEC. 451. Special masters may make deeds by order of the court.

any of said courts, entered upon the journals and take effect from and after the date thereof. [1867, 51.]

SEC. 431. [**Action dismissed when set-off or counter-claim pleaded.**]—In any case where a set-off or counter-claim has been presented, the defendant shall have the right of proceeding to the trial of his claim, although the plaintiff may have dismissed the action or failed to appear.

SEC. 432. [**On failure to answer.**]—If the taking of an account, or the proof of a fact, or the assessment of damages, be necessary to enable the court to pronounce judgment upon a failure to answer, or after a decision of an issue of law, the court may, with the assent of the party not in default, take the account hear the proof, or assess the damages; or may, with the like assent, refer the same to a referee, master, or commissioner, or may direct the same to be ascertained or assessed by a jury. If a jury be ordered, it shall be on or after the day on which the action is set for trial.

SEC. 433. [**By confession.**]—Any person indebted, or against whom a cause of action exists, may personally appear, in a court of competent jurisdiction, and, with the assent of the creditor, or person having such cause of action, confess judgment therefor, whereupon judgment shall be entered accordingly.

SEC. 434. [**Same—Cause of action stated.**]—The debt or cause of action shall be briefly stated in the judgment, or in a writing to be filed as pleadings in other actions.

SEC. 435. [**Same—Effect.**]—Such judgment shall authorize the same proceedings for its enforcement as judgments rendered in actions regularly brought and prosecuted; and the confession shall operate as a release of errors.

SEC. 436. [**Same—By attorney.**]—Every attorney who shall confess judgment in any case, shall, at the time of making such confession, produce the warrant of attorney for making the same, to the court before which he makes the confession, and the original, or a copy of the warrant shall be filed with the clerk of the court in which the judgment shall be entered.

SEC. 437. [**Same—By person in custody.**]—If any person be in custody in a civil action, at the suit of another, no warrant of attorney executed by the person in custody, to confess judgment in favor of the person at whose suit he is in custody, shall be of any force, unless some attorney expressly named by the person in custody be present, and sign the warrant of attorney as a witness.

MANNER OF GIVING AND ENTERING JUDGMENT.

SEC. 438. [**Upon general verdict.**]—When a trial by jury has been had, judgment must be rendered by the clerk in conformity to the verdict, unless it is special, or the court order the case to be reserved for future argument or consideration.

SEC. 439. [**Upon special finding—Reserved case.**]—Where the verdict is special, or where there has been a special finding on particular questions of fact, or where the court has ordered the case to be reserved, it shall order what judgment shall be entered.

SEC. 440. [**Upon pleadings.**]—Where, upon the statements in the pleadings, one party is entitled by law to judgment in his favor, judgment shall be so rendered by the court, though a verdict has been found against such party.

SEC. 441. [**Upon set-off—Counter claim.**]—If a counter-claim or set-off established at the trial, exceeds the plaintiff's claim so established, judgment for the defendant must be given for the excess; or, if it appear that the defendant is entitled to any affirmative relief, judgment shall be given therefor.

SEC. 442. [**Infant's rights, reserved.**]—It shall not be necessary to reserve, in a judgment or order, the right of an infant to show cause against it after his attaining full age; but in any case in which, but for this section, such reservation would have been proper, the infant, within one year after arriving at the age of twenty-one years, may show cause against such order or judgment.

SEC. 432. See section 896. 11 Neb. 398. SEC. 440. See note to sec. 428. 11 Neb. 471.

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TITLE XII.—CAUSES OF ACTION WHICH SURVIVE, AND ABATEMENT OF ACTIONS.

SEC. 454. [**Causes of action which survive.**]—In addition to the causes of action which survive at common law, causes of action for *mesne* profits, or for an injury to real or personal estate, or for any deceit or fraud, shall also survive, and the action may be brought notwithstanding the death of the person entitled or liable to the same.

SEC. 455. [**Actions which do not abate.**]—No action pending in any court shall abate by the death of either or both the parties thereto, except an action for libel, slander, malicious prosecution, assault, or assault and battery, for a nuisance, or against a justice of the peace for misconduct in office; which shall abate by the death of the defendant.

TITLE XIII.—REVIVOR.

SEC. 456. [**Of action—Death of one of several parties.**]—Where there are several plaintiffs or defendants in an action, and one of them dies, or his powers as a personal representative cease, if the right of action survive to or against the remaining parties, the action may proceed, the death of the party, or the cessation of his powers, being stated on the record.

SEC. 457. [**Same—Action to proceed.**]—Where one of several plaintiffs or defendants dies, or his powers as a personal representative cease, if the cause of action do not admit of a survivorship, and the court is of opinion that the merits of the controversy can be properly determined, and the principles applicable to the case fully settled, it may proceed to try the same as between the remaining parties; but the judgment shall not prejudice any who were not parties at the time of the trial.

SEC. 458. [**Revivor in name of representatives.**]—Where one of the parties to an action dies, or his powers as a personal representative cease, before the judgment, if the right of action survive in favor of or against his representatives or successor, the action may be revived, and proceed in their names.

SEC. 459. [**Order of revivor.**]—The revivor shall be by a conditional order of the court if made in term, or by a judge thereof if made in vacation, that the action be revived in the names of the representatives or successor of the party who died, or whose powers ceased, and proceed in favor of or against them.

SEC. 460. [**Same—Made upon order.**]—The order may be made on the motion of the adverse party, or of the representatives or successor of the party who died, or whose powers ceased, suggesting his death or the cessation of his powers, which, with the names and capacities of his representatives or successor, shall be stated in the order.

SEC. 461. [**Same—Service of order.**]—If the order is made by consent of the parties, the action shall forthwith stand revived; and if not made by consent, the order shall be served in the same manner, and returned within the same time, as a summons, upon the party adverse to the one making the motion, and if sufficient cause be not shown against the revivor, the action shall stand revived.

SEC. 462. [**Notice by publication.**]—When the plaintiff shall make an affidavit, that the representatives of the defendant, or any of them, in whose name the action may be ordered to be revived, are non-residents of the state, or have left the same to avoid the service of the order, or so conceal themselves that the order cannot be served upon them, or that the names and residence of the heirs or devisees of the person against whom the action may be ordered to be revived, or some of them, are unknown to the affiant, a notice may be published

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SEC. 456. Revivor is matter of right. 7 Neb. 266. Continues original action. Id. 6 Neb. 424. Order conclusive. 6 Neb. 523. *No objections heard which seek to go behind original judgment.* 10 Neb. 192. Revivor against joint debtors. 12 Neb. 333. Failure of clerk to change title of cause not fatal. 6 Neb. 506. And see 12 Neb. 18.

SEC. 458. 6 Neb. 521.

for four consecutive weeks.

SEC. 463. Actions of dead parties may be revived by their representatives, within one year.

EXECUTIONS.

SEC. 476. Judgments, other than confessed, are a lien within the county from the first day of the term; and on foreclosure, execution may be stayed nine months; on ordering judgments for money, as follows: On fifty dollars, for three months; on one hundred dollars, six months; over one hundred dollars, nine months; and sureties must justify in double the amounts.

SEC. 482. Judgments become dormant if execution is delayed five years.

SEC. 486. If property levied on is claimed by a third person, the right is tried before a Justice with a jury; plaintiff may indemnify officer, and have a sale notwithstanding; delivery bond may be taken for unsold goods; ten days' notice of sale of goods; lands to be appraised subject to liens, and sold for two-thirds; and Clerks and County Treasurer shall certify liens to Sheriff, on demand; delinquent officers not entitled to appraisement; sale of land requires thirty days' newspaper notice, and printer's fee is payable in advance; may be redeemed before confirmation of sale, by payment with twelve per cent. interest; officer may retain purchase money until sale is confirmed; the deed made is *prima facie* evidence of sale, and conveys all title of defendant.

SEC. 506. Sheriff's successor may be ordered to make deed; reversal of judgment does not defeat title; new appraisement ordered after two offers without a sale; judgments against sureties are to be certified, and execution runs against them, only after the property of principal has been exhausted.

SEC. 513. For neglect of foregoing duties, Sheriff may be amerced on two days' notice; and Clerk may be amerced in like manner for refusal to pay over money collected, with ten per cent. penalty; sureties of officer may be made parties by action, but execution first runs against principal.

SEC. 516. Execution from another county may be returned by mail, and also money when so instructed; after amercement, Sheriff has benefit of original judgment.

EXEMPTIONS.

SEC. 521. Head of family, owning no homestead, may hold personally exempt from forced sale to amount of five hundred dollars.

SEC. 530. No property hereinafter mentioned shall be liable to attachment, execution, or sale, on any final process issued from any court in this state, against any person being a resident of this state and the head of a family. *First.* The family bible. *Second.* Family pictures, school books, and library for the use of the family. *Third.* A seat or pew in any house or place of public worship. *Fourth.* A lot in any burial ground. *Fifth.* All necessary wearing apparel of the debtor and his family. All beds, bedsteads, and bedding necessary for the use of such family. All stoves and appendages put up or kept for the use of the debtor and his family, not to exceed four. All cooking utensils, and all other household furniture not herein enumerated, to be selected by the debtor, not exceeding in value one hundred dollars. *Sixth.* One cow, three hogs, and all pigs under six months old, and if the debtor be at the time actually engaged in the business of agriculture, in addition to the above, one yoke of oxen, or a pair of horses in lieu thereof; ten sheep, and the wool therefrom, either in the raw material or manufactured into yarn or cloth; the necessary food for the stock mentioned in this section, for the period of three months; one wagon, cart or dray, two plows and one drag; the necessary gearing for the team herein exempted; and other farming implements not exceeding fifty dollars in value. *Seventh.* The provisions for the debtor and his family necessary for six months' support, either provided or growing, or both, and fuel necessary for six months. *Eighth.* The tools and instruments of any mechanic, miner or other person, used and kept for the purpose of carrying on his trade or business. The library and implements of any professional man. All of which articles hereinbefore intended to be exempt, shall be chosen by the debtor, his agent, clerk or legal representative, as the case may be.

SEC. 531. Clerk's, laborer's, and mechanic's, wages not affected by the foregoing.

SEC. 531*a*. Above-named wages, unpaid, are not subject to attachment.

SEC. 532. Equity proceedings allowed in aid of execution, to reach any interest of defendant in choses in action, money claims, etc., and necessary examination may be had; and the Judge may, if

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his attorney of record, if made in vacation. When any sale is confirmed in vacation, the judge confirming the same shall cause his order to be entered on the journal by the clerk. [Amended 1875, 38. Took effect Feb. 25, 1875.]

SEC. 499. [**Deed to purchaser.**]—The sheriff or other officer, who, upon such writ or writs of execution, shall sell the said lands and tenements, or any part thereof, shall make to the purchaser or purchasers thereof, as good and sufficient a deed of conveyance of lands and tenements sold as the person or persons against whom such writ or writs of execution were issued could have made of the same, at the time they became liable to the judgment, or at any time thereafter.

SEC. 500. [**Same—Estate conveyed.**]—The deed shall be sufficient evidence of the legality of such sale and the proceedings therein until the contrary be proved, and shall vest in the purchaser as good and as perfect an estate in the premises therein mentioned as was vested in the party, at or after the time when such lands and tenements became liable to the satisfaction of the judgment. And such deed of conveyance, to be made by the sheriff or other officer, shall recite the execution or executions, or the substance thereof, and the names of the parties, the amount, and date of term of rendition of each judgment, by virtue whereof the said lands and tenements were sold as aforesaid; and shall be executed, acknowledged, and recorded as is or may be provided by law, to perfect the conveyance of real estate in other cases.

SEC. 501. [**Fees of officers—When paid.**]—The officer who levies upon goods and chattels, or lands and tenements, or who is charged with the duty of selling the same by virtue of any writ or execution, may refuse to publish a notice of the sale thereof by advertisement in a newspaper until the party for whose benefit such execution issued, his agent or attorney, shall advance to such officer so much money as will be sufficient to discharge the fees of the printer for publishing such notice.

SEC. 502. [**Same.**]—Before any officer shall be excused from giving the notification mentioned in the last section, he shall demand of the party for whose benefit the execution was issued, his agent or attorney, (provided either of them resides in the county), the fees in said section specified.

SEC. 503. [**Sale, where held.**]—All sales of lands or tenements under execution shall be held at the court house, if there be one in the county in which such lands and tenements are situated, and if there be no court house, then at the door of the house in which the district court was last held. No sheriff or other officer making the sale of property, either personal or real, or any appraiser of such property shall, either directly or indirectly, purchase the same; and every purchase so made shall be considered fraudulent and void.

SEC. 504. [**Other writs.**]—If lands and tenements levied on as aforesaid are not sold upon one execution, other executions may be issued to sell the lands so levied upon.

SEC. 505. [**Several writs, how served.**]—In all cases when two or more executions shall be put into the hands of any sheriff or other officer, and it shall be necessary to levy on real estate to satisfy the same, and either of the judgment creditors in whose favor one or more of said executions is issued, shall require the sheriff, or other officer, to make a separate levy to satisfy his execution or executions, it shall be the duty of the sheriff, or other officer, to levy said executions, or so many thereof as may be required, on separate parcels of real property of the judgment debtor or debtors, giving to the officer making the levy on behalf of the creditor, whose execution may, by the provisions of this chapter,

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SEC. 499. Successor of sheriff may make deed. 1 Neb. 322. See also 15 Neb. 381.

SEC. 500. Sale transfers title to purchaser. 13 Neb. 167. But subject to prior liens. 5 Neb. 44. 15 Id. 379. Purchaser protected to same extent as at private sale from claims of third persons of which he had no notice. 5 Neb. 169. Acquires all interest of mortgagor in mortgaged property. 7 Neb. 454. 15 Id. 603. And only interest of judgment debtor. 8 Neb. 435. 15 Id. 664. After acquired title does not inure to benefit of purchaser. Id. While supersedeas bond is on file, acquires no rights as against owner. 10 Neb. 134. Rights of purchaser fully protected "only when the power to make the sale is clearly given." Id. Title of purchaser depends on sale being finally confirmed. Id. But if there be no supersedeas bond on file and third party purchase, his title is unaffected by subsequent reversal 1 Neb. 240. Purchaser may compel execution of deed to himself. 19 Neb. 687.

SEC. 503. Purchaser may be compelled to complete purchase; is entitled to order for deed. 1 Neb. 322. Officer may bring action for purchase money. 9 Neb. 256. Appraiser cannot purchase. 5 Neb. 269. 14 Id. 368. 19 Id. 39.

there is danger of the debtor leaving the state or concealing himself to avoid the examination herein mentioned, issue a warrant, requiring the sheriff to arrest him and bring him before such judge within the county in which the debtor may be arrested. Such warrant can be issued only by a probate judge or a judge of the district court of the county in which such debtor resides or may be arrested. Upon being brought before the judge, he shall be examined on oath, and other witnesses may be examined on either side, and if on such examination it appear that there is danger of the debtor leaving the state, and that he has property which he unjustly refuses to apply to such judgment, he may be ordered to enter into an undertaking, in such sum as the judge may prescribe, with one or more sureties, that he will from time to time attend for examination before the judge or referee as shall be directed. In default of entering into such undertaking, he may be committed to the jail of the county by warrant of the judge, as for a contempt.

SEC. 536. [**Criminating answers.**]—No person shall, on examination pursuant to this chapter, be excused from answering any question on the ground that his examination will tend to convict him of a fraud, but his answer shall not be used as evidence against him in a prosecution for such fraud.

SEC. 537. [**Payment by debtor's debtor.**]—After the issuing of execution against property, any person indebted to the judgment debtor may pay to the sheriff the amount of his debt, or so much thereof as may be necessary to satisfy the execution, and the sheriff's receipt shall be a sufficient discharge for the amount so paid or directed to be credited by the judgment creditor on the execution.

SEC. 538. [**Examination of debtor's debtor.**]—After the issuing or return of an execution against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon proof by affidavit or otherwise, to the satisfaction of the judge, that any person or corporation has property of such judgment debtor, or is indebted to him, the judge may, by an order, require such person or corporation, or any officer or member thereof, to appear, at a specified time and place, within the county in which such person or corporation may be served with the order to answer, and answer concerning the same. The judge may also, in his discretion, require notice of such proceeding to be given to any party in the action, in such manner as may seem to him proper.

SEC. 539. [**Same—Witnesses.**]—Witnesses may be required, upon the order of the judge, or by a subpœna issued by the clerk of the district court, to appear and testify upon any proceedings under this chapter, in the same manner as upon the trial of an issue.

SEC. 540. [**Same.**]—The party or witness may be required to attend before the judge, or before a referee appointed by the court or judge. If before a referee, the examination must be taken by the referee, and certified by the judge. All examinations and answers before a judge or referee under this chapter, must be on oath, but when a corporation answers, the answer must be on the oath of an officer thereof.

SEC. 541. [**Same—Application of property.**]—The judge may order any property of the judgment debtor not exempt by law, in the hands of either himself or any other person or corporation, or due to the judgment debtor, to be applied towards the satisfaction of the judgment; but the earnings of the debtor for his personal services, at any time within three months next preceding the order, cannot be so applied, where it is made to appear by the debtor's affidavit, or otherwise, that such earnings are necessary for the use of a family supported wholly or partly by his labor.

SEC. 542 [**Receiver.**]—The judge may also, by order, appoint the sheriff of the proper county, or other suitable person, a receiver of the property of the judgment debtor, in the same manner, and with the like authority as if the appointment was made by the court. The judge may also, by order, forbid a transfer or other disposition of the property of the judgment debtor, not exempt by law, and any interference therewith.

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Sec. 561. Plaintiff may file a transcript of a Justice's judgment with Clerk of District Court, who shall docket same as his execution docket. If it be filed in term time, shall have a lien on the real estate of the judgment debtor, from the day of the filing; if filed in vacation, as against the judgment debtor, said judgment shall have a lien from the day of the filing, and as against subsequent judgment creditors from the first day of the next succeeding term, in the same manner, and to the same extent as if the judgment had been rendered in the district court.

Sec. 563. [**Execution upon.**]—Execution may be issued thereon to the sheriff by the clerk of the court, in the same manner as if the judgment had been taken in court, and the sheriff shall execute and return the same as other executions; and in case of sale of real estate, his proceedings shall be examined and approved by the court, as in other cases.

Sec. 564. [**Certificate of justice—Costs.**]—The justice of the peace shall certify on the transcript the amount, if any, paid on such judgment. The costs of the transcript, the filing of the same and the entry of the case on the execution docket, shall be paid by the party filing the same, and not be taxed to the other party.

TITLE XV.—Miscellaneous Proceedings.

OFFER TO COMPROMISE.

Sec. 565. [**Before trial—Effect.**]—The defendant in an action for the recovery of money only, may, at any time before the trial, serve upon the plaintiff, or his attorney, an offer in writing, to allow judgment to be taken against him for the sum specified therein. If the plaintiff accept the offer, and give notice thereof to the defendant or his attorney, within five days after the offer is served, the offer, and an affidavit that the notice of acceptance was delivered in the time limited, may be filed by the plaintiff, or the defendant may file the acceptance, with a copy of the offer verified by affidavit; and in either case, the offer and acceptance shall be noted in the journal, and judgment shall be rendered accordingly. If the notice of acceptance be not given, in the period limited, the offer shall be deemed withdrawn, and shall not be given in evidence, or mentioned on the trial. If the plaintiff fails to obtain judgment for more than was offered by the defendant, he shall pay the defendant's costs from the time of the offer.

Sec. 566. [**Same—Continuance.**]—The making of an offer pursuant to the provisions contained in the foregoing section, shall not be a cause for a continuance of an action, or a postponement of a trial.

SUBMITTING A CONTROVERSY.

Sec. 567. [**Submission without action.**]—Parties to a question which might be the subject of a civil action, may, without action, agree upon a case containing the facts upon which the controversy depends, and present a submission of the same to any court which would have jurisdiction if an action had been brought. But it must appear by affidavit that the controversy is real, and the proceedings in good faith, to determine the rights of the parties. The court shall thereupon hear and determine the case and render judgment as if an action were pending.

Sec. 568. [**Record.**]—The case the submission and the judgment shall constitute the record.

Sec. 569. [**Judgment—Effect.**]—The judgment shall be with costs, may be enforced, and shall be subject to reversal, in the same manner as if it had been rendered in an action, unless otherwise provided in the submission.

OFFER TO CONFESS JUDGMENT.

Sec. 570. [**After action brought.**]—After an action for the recovery of money is brought, the defendant may offer in court to confess judgment for part of the amount claimed, or part of the causes involved in the action. Whereupon, if the plaintiff, being present, refuse to accept such confession of judgment in full of his demands against the defendant in the action, or, having had such notice that the offer would be made, of its amount, and of the time of making it, as the court shall deem reasonable, fail to attend, and on the trial do not recover more than was so offered to be confessed, such plaintiff shall pay all the costs of the defendant, incurred after the offer. The offer shall not be deemed to be an admission of the cause of action or amount to which the plaintiff is entitled, nor be given in evidence upon the trial.

Sec. 571. [**Before action brought.**]—Before any action for the recovery of money is brought against any person, he may go into the court of the county of his residence, or of that in which the person having the cause of action resides, which would have jurisdiction of the action, and offer to confess judgment in favor of such person for a specified sum on such cause of action. Whereupon, if such person, having had such notice that the offer would be made, of its amount, and of the time and place of making it, as the court shall deem reasonable, do not attend to accept the confession, or attending, refuse to accept it, and should afterwards commence an action upon such cause, and not recover more than the amount so offered to be confessed, he shall pay all the costs of the action; and on the trial thereof, the offer shall not be deemed to be an admission of the cause of action, or amount to which the plaintiff is entitled, nor be given in evidence.

MOTIONS AND ORDERS.

Sec. 572. [**Motion—Defined.**]—A motion is an application for an order addressed to the court or a judge in vacation, by any party to a suit or proceeding, or one interested therein.

Sec. 573. [**Same—Several objects.**]—Several objects may be included in the same motion, if they all grow out of or are connected with the action or proceeding in which it is made.

Sec. 574. [**Same—Notice—Contents.**]—Where notice of a motion is required, it must be in writing, and shall state the names of the parties to the action or proceeding in which it is to be made, the name of the court or judge before whom it is to be made, the place where and the day on which it will be heard, the nature and terms of the order or orders to be applied for, and if affidavits are to be used on the hearing, the notice shall state that fact. It shall be served a reasonable time before the hearing.

Sec. 575. [**Notice—Service.**]—Notices of motions mentioned in this chapter may be served by a sheriff, coroner, or constable, or by any disinterested person, and the return of any such officer, or affidavit of any such person, shall be proof of service. The service shall be on the party or his attorney of record, if the said party or his attorney be resident within the county in which the motion is made, and in case there is more than one party adverse to such motion, service shall be made upon each party or his attorney.

Sec. 576. [**Same.**]—The service of a notice shall be made, as is required by law for the service of a summons, and when served by an officer, he shall be entitled to like fees.

Sec. 577. [**Motions to strike pleadings from files.**]—Motions to strike pleadings and papers from the files may be made with or without notice, as the court or judge shall direct.

Sec. 578. [**Order—Defined.**]—Every direction of a court or judge made, entered in writing and not included in a judgment, is an order.

Sec. 579. [**Same—Out of court—Entry.**]—Orders made out of court, shall be forthwith entered by the clerk in the journal of the court, in the same manner as orders made in term.

TITLE XVI.—Errors in Civil Cases.

PROCEEDINGS TO REVERSE, VACATE OR MODIFY JUDGMENTS AND ORDERS IN COURTS OF APPELLATE JURISDICTION.

Sec. 580. [**Tribunals inferior to district court.**]—A judgment ren-

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Sec. 572 In proceedings under sec. 82, service of notice upon attorney for plaintiff is sufficient service under sec. 575. 17 Neb. 329

Sec. 575. See 17 Neb. 329.

Sec. 580. Decision of county board. 3 Neb. 41. Review of error of county judge. 7 Neb. 128. Allowance of accounts against estate subject to review. 10 Neb. 333. See 19 Neb. 450.

dered, or final order made, by a probate court, justice of the peace, or any other tribunal, board, or officer exercising judicial functions, and inferior in jurisdiction to the district court, may be reversed, vacated, or modified by the district court.

SEC. 581. [**Final order—Defined.**]—An order affecting a substantial right in an action, when such order in effect determines the action and prevents a judgment, and an order affecting a substantial right made in a special proceeding, or upon a summary application in an action after judgment, is a final order which may be vacated, modified or reversed, as provided in this title.

SEC. 582. [**Of district court.**]—A judgment rendered or final order made by the district court, may be reversed, vacated or modified by the supreme court, for errors appearing on the record.

SEC. 583. [**Repealed 1877, 14.**]

SEC. 584. [**Proceedings on error in supreme court.**]—The proceedings to obtain such reversal, vacation, or modification, shall be by petition entitled "petition in error," filed in a court having power to make such reversal, vacation or modification, setting forth the errors complained of, and thereupon a summons shall issue and be served, or publication made, as in the commencement of an action. A service on the attorney of record in the original case shall be sufficient. The summons shall notify the adverse party that a petition in error has been filed in a certain case, naming it, and shall be returnable on or before the first day of the next term of court, if issued in vacation, and twenty days before the commencement of the term; if issued in term time, or within twenty days before the commencement of the term, it shall be returnable on a day named in said summons. In all cases in the supreme court, if a case be docketed twenty days

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SEC. 581. Orders *held* to be final. Enjoining sale of real estate. 13 Neb. 420. Discharging garnishees. 12 Neb. 323. Decision of county board of equalization. 3 Neb. 41. Attachment proceedings. 6 Neb. 527. County court allowing an account against estate. 10 Neb. 333. Vacating judgment of dismissal. 5 Neb. 240. 9 Id. 277. Dismissing action. 11 Neb, 363. Confirming or setting aside sale. 8 Neb. 298, 398. Action of forcible entry, etc. 9 Neb. 145. Requiring attorney to pay money into court. 14 Neb. 455. Modifying judgment under § 602. 5 Neb. 193. Order of board of public lands and buildings in leasing school lands, etc. 17 Neb. 690. Order of county superintendent creating, changing and dividing district. 18 Neb 648. Application to modify a decree of divorce. 19 Neb. 585. Judgment of reversal of justice's judgment. 5 Neb. 240. 19 Id. 589. Order overruling petition to intervene. 20 Neb. 630. Order overruling an application to set aside a default. 20 Neb. 319. Orders *held* not to be final. Order setting aside verdict and granting a new trial during the term. 16 Neb. 572. Finding that "allegations of petition are confessed to be true by defendant who is in default for want of answer." 16 Neb. 666. Order vacating judgment during term at which it is rendered. 14 Neb. 453. Order overruling motion to discharge attachment. 15 Neb. 17. Judgment in partition. 2 Neb. 309. Dissolving temporary injunction 1 Neb. 311. 8 Id. 17. 10 Id. 441. 20 Id. 319. Judgment for costs only. 3 Neb. 255. 5 Id. 195. 10 Id. 511. Refusing discharge of prisoner before judgment. 10 Neb. 104. Mere recital that one was rendered. 5 Neb. 382. 7 Id. 228. Substituting party plaintiff. 7 Id. 228. In ejectment; cause remanded for judgment. 14 Neb. 378. Issuance of execution in cases arising under the herd law. 17 Neb. 102. An order awarding alimony pendente lite. 18 Neb. 463. An order overruling a motion for an order of arrest. 20 Neb. 505.

SEC. 582. Includes final judgment awarding writ of mandamus. 19 Neb. 151. Jurisdiction of supreme court limited to errors appearing on the record. 6 Neb. 252. 7 Id. 197. Has jurisdiction to correct errors in contested elections. 8 Neb. 439. And in quo warranto. 13 Neb. 531. And in all cases commenced within one year from date of judgment. 8 Neb. 147, 295. And this without regard to time when motion for new trial was decided. 14 Neb. 431. Limitation as to person of unsound mind. 10 Neb. 541. Summons issued within one year may be served afterwards. 10 Neb. 332. Action not "commenced" until summons issued and served. 8 Neb. 150. But alias summons issued after year is up of no effect. 13 Neb. 231, 282. Court has no power to call jury in appeal cases. 2 Neb. 19. Action at law reviewable only on error. 9 Neb. 95. Decision of board of equalization not reviewable on agreed statement of facts. 5 Neb. 367. Judgment settled by compromise not reviewable. 10 Neb. 361. Appeal dismissed, there being nothing to show that attention of court below was called to entry of default complained of. 12 Neb. 309. If defendant in trial court omit a defense to merits which he might have made, he will in supreme court be bound by record. 12 Neb. 192. Stipulation for continuance not waiver of right to dismiss cause for want of jurisdiction. 14 Neb. 432. Stipulation to continue operates as an appearance 16 Neb. 292. Court has no jurisdiction to require justice to send up amended transcript. 16 Neb. 225. Has jurisdiction to review settlement of assigned estates: 17 Neb. 465.

SEC. 584. Petition in error must be filed before summons issued. 1 Neb. 10. Need not be verified. 9 Neb. 505. Error in date of filing corrected. 4 Neb. 406. Allowed to be filed out of time. 16 Neb. 290. May be amended by leave of court. 13 Neb. 201, 279. And petition filed in court below may be amended in supreme court so as to fully state a cause of action. 14 Neb. 489. Pleading not amendable in supreme court on original motion. 18 Neb. 113. Where action is brought upon contract instead of quantum meruit, and all the proof introduced without objection, showing the right of plaintiff to recover, court will, if necessary, permit amendment of petition to conform to proof, or remand cause for such amendment. 18 Neb. 658. Petition in error not stricken from files for want of bill of exceptions. 5 Neb. 517. Nor because bill was not settled within statutory time, or motion for new trial not made in time. 14 Neb. 430, 456. To entitle a defendant to review of errors committed against him he should take same steps to bring cause up as plaintiff in error. 11 Neb 414. Defendant omitting defense in trial court cannot interpose it here. 12 Neb. 192. Service by publication must be made four successive weeks in Lancaster county. 12 Neb. 342. No errors considered except those assigned in motion for new trial, and those specifically and definitely set out in petition in error. 1 Neb. 405. 11 Id. 144. 12 Id. 211. 13 Id. 491. Motion for new trial not necessary in cases of appeal. 12 Neb. 211. Probable errors favorable to plaintiff not considered. 16 Neb. 284. Judgment not reversed nor verdict set aside where error has been committed without prejudice. 2 Neb. 297. 3 Id. 130. 6 Id. 142. 7 Id. 333. 8 Id. 157. 9 Id. 61, 108, 181. 10 Id. 188. 275, 534. 13 Id. 54, 178, 331. Presumption in favor of correctness or more before the next succeeding term it shall stand for hearing, at said term. If less than twenty days intervene the cause shall not stand for trial, except by consent of all the parties thereto, until the second term after the docketing of said cause, except causes brought before the court in the exercise of its original jurisdiction. [Amended 1885, chap. 95.]

SEC. 585. [**Summons in error.**]—The summons mentioned in the last section, shall, upon the written precipe of the plaintiff in error, or his attorney, be issued by the clerk of the court in which the petition is filed, to the sheriff of any county in which the defendant in error or his attorney of record may be; and if the writ issue to a foreign county, the sheriff thereof may return the same by mail to the clerk, and shall be entitled to the same fees as if the same had been returnable to the district court of the county in which such officer resides. The defendant in error, or his attorney may waive in writing the issuing or service of the summons.

SEC. 586. [**Transcript**].—The plaintiff in error shall file with his petition a transcript of the proceedings containing the final judgment or order sought to be reversed, vacated, or modified. No written or printed abstract or any copy of an abstract of the record shall be required in any case in the supreme court of this state. Sec. 2. This act shall apply to cases now pending in the supreme court. [Amended 1887, chap. 96. Took effect July 1, 1887.]

SEC. 587. [**Same—How furnished.**]—Judges of probate courts, justices of the peace, and other judicial tribunals having no clerk, and clerks of every court of record, shall, upon request and being paid the lawful fees therefor, furnish an authenticated transcript of the proceedings, containing the judgment or final order of said courts, to either of the parties to the same, or to any person interested in procuring such transcript.

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of proceedings. Error must appear affirmatively. 5 Neb. 354. 12 Id. 61, 86. 16 Neb. 422, 609. Error must be prejudicial. 5 Neb. 489. 9 Id. 181. 15 Id. 375, 378, 394, 515, 628. Mere difference of opinion between trial court and this court not sufficient to set aside verdict. 5 Neb. 85. 7 Id. 41. 8 Id. 426. 9 Id. 483. 10 Id. 612. 12 Id. 412. 16 Id. 523. When there is court will reverse. 5 Neb. 526. 8 Id. 372. But where the only questions are those of fact, judgment will be affirmed unless clearly against weight of evidence. 14 Neb. 251. And if there be a conflict of evidence, if it be sufficient to support finding, judgment will not be disturbed. 14 Neb. 176. Court cannot consider whether verdict is against evidence unless all testimony brought up. 3 Neb. 168. And if there be no bill of exceptions containing testimony, presumption is there was sufficient evidence to sustain finding, etc. 8 Neb. 437. Verdict may be sustained as to part of defendants though set aside as to others. 2 Neb. 343. [See however 15 Id. 417.] If new trial cannot be awarded, judgment will be entered in supreme court. 2 Neb. 290. Where party elects to stand on demurrer below, and brings cause up for review, and the judgment on demurrer is sustained, cause will not be remanded for leave to answer to merits. 8 Neb 502. On appeal, evidence below must be certified by judge unless parties waive. 8 Neb. 265. Judgment on condition of filing *remittitur*. 8 Neb. 539. 16 Neb. 25, 58, 580. Judgment reversed with instructions to district court to enter order of removal of cause to U. S. circuit court, *nunc pro tunc* but without costs in this court. 11 Neb. 208. On affirming decree of divorce reference was ordered to take testimony of income of defendant, so as to allow alimony. 12 Neb. 76. And where judgment below in ejectment is right, reference will be ordered to ascertain amount of taxes due. 11 Neb. 584. Plaintiff in error estopped to further proceed after receiving amount of judgment below from defendant in error. 12 Neb. 447. Review not allowed after stay taken. 11 Neb. 476. 12 Id. 580. Cause will be dismissed for want of prosecution, where plaintiff fails to appear two successive terms. 3 Neb 372. And on motion of plaintiff where the land in controversy has been conveyed by defendant to him. 14 Neb. 420. And on motion of defendant if not filed in time. 7 Neb. 124. On motion to dismiss, sufficiency of assignments of error will not be considered. 8 Neb. 96. Where motion to dismiss appeal sustained, leave given to file petition in error. 5 Neb. 567. 20 Id. 318. But not where it is necessary to file amended transcript to show judgment below. 13 Neb. 224. Question discussed in brief not in record, will not be considered. 13 Neb. 48. If cause remanded for judgment and there has been substantial compliance, it will be sustained. 13 Neb. 178. Defendant not required to appear for argument until time when cause is assigned. 13 Neb. 198. After cause submitted, too late to raise objections to bill of exceptions. 13 Neb 272, 501. If record is imperfect so the court cannot tell whether facts assigned for error exist or not, judgment will be affirmed. 13 Neb. 462. 19 Neb. 215. And where there is no principle of law involved and decided in a case, and verdict not being against evidence, judgment will be affirmed. 15 Neb. 7, 407, 670. And where no brief is filed as required by rule, or cause shown why such rule should not be suspended, judgment will be affirmed unless error plainly appear. 15 Neb. 56. And where the only objection to the judgment is, that the verdict is not sustained by the evidence, and for any cause the bill of exceptions be quashed or stricken from the files, and there being no point raised, or question involved in the case, which can be considered without an examination of the testimony on which the judgment was rendered, the judgment will be affirmed. 15 Neb. 144, 146. Objection to form of judgment of county court, not made in district, will not be considered by supreme. 14 Neb. 9.

SEC. 585. Attorney of record may waive issuance of summons. 1 Neb. 325.

SEC. 586. A transcript filed before petition in error will not for that reason be stricken from files. 12 Neb. 524. Transcript should be full and complete, but contain only what is necessary to enable court to pass on questions presented. 1 Neb. 106, 363. 2 Id. 10. 13 Id. 201. Must show when and where court was held, its terms, judge and names of officers, and be authenticated by clerk. 1 Neb. 325. 2 Id. 170. 6 Id. 418. If unnecessary matter is put in record, cost of it will be taxed to party in fault. 12 Neb. 201, 476. If defective so court cannot examine questions judgment will be affirmed. 13 Neb. 462. Should include pleadings, *aliter* judgment will be affirmed 14 Neb. 262. But testimony need not be included where facts are not disputed and the only question is one of law. 4 Neb. 55. Notes of clerk are not a part of record. 2 Neb. 66. Paper not rightly in record stricken out on motion. 1 Neb. 181. But motion to strike out part of transcript not considered. 3 Neb. 186. Should contain ruling of court on objections made. 10 Neb. 38. And depositions, to review order suppressing them. 12 Neb. 85. Amendment of this section repeals law of 1885 requiring printed abstracts of record. Decisions prior to repeal see 19 Neb. 59, 20 Id. 205.

SEC. 587. On appeals from District Court, original bills of exceptions may be used, and Clerk shall certify the fact; and shall be returned after final judgment in appeal.

SEC. 588. For supercedeas, bond must be given, conditioned, *first*, to pay amount of money judgment on affirmance; *second*, to abide final judgment and pay costs, if judgment is for a conveyance; *third*, not to commit waste, if in possession of property in controversy; *fourth*, to abide judgment and pay costs, where judgment directed delivery of documents, which are to be placed *ad interem* in Clerk's hands.

SEC. 589. Instead of second subdivision, instrument may be executed and left with Clerk to abide the event.

SEC. 590. To take effect only on filing petition in error, and Clerk's approval to be endorsed thereon.

SEC. 591. But judgment may be enforced, if creditor will give ample bond for restitution.

SEC. 592. Proceeding in error to commence in one year, or in case of an infant, a person of unsound mind, or imprisoned, within one year as aforesaid, exclusive of the time of such disability; *Provided*, That the provisions of this act shall only apply to judgments or decrees rendered after the date of its taking effect. [1875, 40. Amended 1877, 14. Took effect June 1, 1877.]

SEC. 593. [**Stay of execution—Undertaking.**]—No proceedings to reverse, vacate, or modify any judgment rendered, or final order made, by a justice of the peace, shall operate as a stay of execution, unless the clerk of the district court shall take a written undertaking to the defendant in error, executed on the part of the plaintiff in error, by one or more sufficient sureties, to the effect that the plaintiff will pay all the costs which have accrued or may accrue on such proceedings in error, together with the amount of any judgment that may be rendered against such plaintiff in error, either on the further trial of the case, after the judgment of the court below shall have been set aside or reversed, or upon and after the affirmance thereof in the district court. Nor shall said proceedings operate as a stay of execution on judgments of restitution rendered in actions for the forcible entry and detention, or the forcible detention only, of lands and tenements, unless a further undertaking shall be taken in the manner aforesaid, conditional for the payment to the defendant in error of all money or sums of money that has accrued or may accrue to said defendant from the plaintiff in error for the use, occupation, or rent of the lands and tenements in controversy, in case the judgment sought to be reversed, shall be affirmed. [Amended 1871, 110. Took effect Mar. 25, 1871.]

SEC. 594. [**Proceedings in supreme court on reversal—Mandate.**]—When a judgment or final order shall be reversed either in whole or in part, in the supreme court, the court reversing the same shall proceed to render such judgment as the court below should have rendered, or remand the cause to the court below for such judgment; and the court reversing such judgment or final order, shall not issue execution in causes that are removed before them on error, on which they pronounced judgment as aforesaid, but shall send a special mandate to the court below, as the case may require, to award execution thereupon; and it shall be the duty of the judges of the supreme court to prepare and file their opinion in every case as brought before them, within sixty days after the decision of the same, and no mandate shall be sent to the court below until the opinion provided for by this section has been filed. The court to which such special mandate is sent, shall proceed in such case in the same manner as if such judgment or final order had been rendered therein, and on motion and good cause shown, it may suspend any execution made returnable before it by order of the supreme court, in the same manner as if such execution had been issued from its own court, but such power shall not extend further than to stay proceedings until the matter can be further heard by the supreme court. [Amended 1875, 40. Took effect Feb. 25, 1875.]

SEC. 595. [**Costs on error.**]—When a judgment or final order is reversed, the plaintiff in error shall recover his costs, and when reversed in part, and affirmed in part, costs shall be equally divided between the parties.

SEC. 596. [**No reasonable ground of error—Penalty.**]—When a judgment or final order shall be affirmed in the supreme court, the said court shall also render judgment against the plaintiff in error for five per cent. upon the amount due from him to the defendant in error, unless the court shall enter upon its minutes, that there was reasonable ground for the proceedings in error.

SEC. 597. [**Mistake of clerk.**]—A mistake, neglect, or omission of the clerk shall not be a ground of error, until the same has been presented and acted upon in the court in which the mistake, neglect, or omission occurred.

SEC. 594. If new trial cannot be awarded supreme court will enter judgment and not remand cause. 2 Neb. 290. If a party after an adverse ruling upon his demurrer to a pleading elects to stand upon it, and brings same up for review, when judgment is affirmed, cause will not be remanded with leave to answer to the merits. 8 Neb. 502. See 20 Neb. 405.

SEC. 596. Held unconstitutional. 17 Neb. 703.

SEC. 598. Judgment rendered before the case stood regularly for trial, under the code, is but a clerical error.

SEC. 599. Writs of error and *certiorari* are abolished; but transcripts, when ordered in appeal may be had, as formerly.

SEC. 600. In appeals from Justices, if District Court affirm, the judgment may be there enforced, or certified back for execution; if reversed, shall be retained for trial as on appeal.

VACATION AND MODIFICATION OF JUDGMENTS, IN COURT WHERE RENDERED.

SEC. 602. After term, this may be done: *First*, by new trial in general; *second*, by new trial, on service by publication; *third*, for mistake or irregularity; *fourth*, for fraud; *fifth*, for erroneous proceedings against defendant under disability; *sixth*, death before judgment; *seventh*, unavoidable casualty; *ninth*, where rendered on warrant of attorney, for excess, where defendant had no notice of time and place of trial.

SEC. 603. The proceedings to vacate or modify the judgment or order on the grounds mentioned in subdivisions four, five, six, seven, eight and nine of the last preceding section, shall be by petition verified by affidavit, setting forth the judgment or order, the grounds to vacate or modify it, and the defense to the action, if the party applying was defendant. On such petition a summons shall issue and be served as in the commencement of the action; *Provided*, Such summons shall not issue in any case in which there is upon the minutes of the court, or among the files of the case, a waiver of error by the party or his attorney, unless the court, or a Judge thereof, shall endorse upon the petition permission to issue such summons.

SEC. 604. The proceedings to correct mistakes or omissions of the Clerk, or irregularity in obtaining a judgment or order, shall be by motion, upon reasonable notice to the adverse party or his attorney in the action. The motion to vacate a judgment because of its rendition before the action regularly stood for trial, can be made only in the first three days of the succeeding term.

SEC. 605. The court may first try and decide upon the grounds to vacate or modify a judgment or order, before trying or deciding upon the validity of the defense or cause of action.

SEC. 606. A judgment shall not be vacated on motion or petition, until it is adjudged that there is a valid defense to the action in which the judgment is rendered, or, if the plaintiff seeks its vacation, that there is a valid cause of action; and where a judgment is modified, all liens and securities obtained under it shall be preserved to the modified judgment.

SEC. 607. Pending foregoing proceedings, injunction may be allowed.

SEC. 609. Proceedings to vacate or modify a judgment or order, for the causes mentioned in subdivision four, five and seven of section six hundred and two, must be commenced within two years after the judgment was rendered, or order made, unless the party entitled thereto be an infant, married woman, or person of unsound mind, and then within two years after removal of such disability. Proceedings for the causes mentioned in subdivisions three and six of the same section, shall be within three years, and in subdivision nine within one year, after the defendant has notice of the judgment.

SEC. 611. **[Cases pending in appellate court.]**—Cases pending in appellate courts on writs of error or otherwise, when this code takes effect, shall be conducted to final judgment, as if it had not been adopted, and the liens of judgments and decrees rendered when it takes effect shall be preserved.

TITLE XVII.—COSTS.

SEC. 612. **[Security—Non-resident plaintiff.]**—In all cases in which the plaintiff is a non-resident of the county in which the action is to be brought, before commencing such action the plaintiff must furnish a sufficient surety for costs. The surety must be a resident of the county where the action is to be brought, and approved by the clerk. His obligation shall be complete, simply by endorsing the summons, or signing his name on the complaint as security for costs. He shall be bound for the payment of all costs, which may be adjudged against the plaintiff in the court in which the action is brought, or in any other to which it may be carried, and for costs of the plaintiff's witnesses, whether the plaintiff obtain judgment or not.

SEC. 613. **[Same—Failure—Action dismissed.]**—An action in which security for the costs is required by the last section, and has not been given shall be dismissed on motion and notice by the defendant at any proper time before judgment, unless in a reasonable time to be allowed by the court, such security for costs be given.

SEC. 614. **[Same—Plaintiff becoming non-resident.]**—If the plaintiff in an action after its commencement, become a non-resident of the county in which it was brought, he shall give security for costs in the manner and under the restrictions provided in the two preceding sections.

SEC. 615. **[Additional security.]**—In an action in which security for costs has been given, the defendant may at any time before judgment, after reasonable notice to the plaintiff, move the court for additional security on the part of the plaintiff; and if, on such motion, the court be satisfied that the surety has removed from this state, or is not sufficient, the action may be dismissed, unless, in a reasonable time to be fixed by the court, sufficient security be given by plaintiff.

SEC. 616. **[Judgment against surety for costs.]**—After final judgment has been rendered in an action in which securitiy for costs has been given, as required by this chapter, the court, on motion of the defendant, or any other person having a right to such costs, or any part thereof, after ten days notice of such motion, may enter up judgment in the name of the defendant, or his legal representatives, against the surety for costs, his executors or administrators, for the amount of the costs adjudged against the plaintiff, or so much thereof as may be unpaid. Execution may be issued on such judgment, as in other cases, for the use and benefit of the persons entitled to such costs.

SEC. 617. **[Informers under penal statutes.]**—If any informer, under a penal statute, to whom the penalty, or any part thereof, if recovered, is given, shall dismiss his suit or prosecution, or fail in the same, he shall pay all costs accruing on such suit or prosecution unless he be an officer whose duty it is to commence the same.

SEC. 618. **[Defendant disclaiming.]**—Where defendants disclaim having any title or interest in land or other property, the subject matter of the action, they shall recover their costs, unless for special reasons the court decide otherwise.

SEC. 619. **[Motions—Amendments.]** — Unless otherwise provided by statute, the costs of motions, continuances, amendments, and the like, shall be taxed and paid as the court in its discretion may direct.

SEC. 612. Security given after service of summons sufficient. 12 Neb. 41. Security by partnership. 7 Neb. 246. Statutes relative to costs construed strictly. 10 Neb. 308. Plaintiff and defendant primarily liable. 12 Neb. 243. See 17 Neb. 310, 702. 18 Id. 508.

SEC. 619. On amendment of petition costs taxed to plaintiff. 9 Neb. 5.

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ACTIONS CONCERNING REAL PROPERTY.

SEC. 626. In real actions plaintiff may allege that he has the legal estate, and right of possession; and defendant may in his answer deny, generally, the title alleged in the petition, or that he withholds possession, as the case may be; but if he deny the title of the plaintiff, possession by the defendant shall be taken as admitted. Where he does not defend for the whole premises, the answer shall describe the particular part for which defense is made.

SEC. 628. [**Tenants in common.**]—In an action by a tenant in common of real property, against a co-tenant, the plaintiff must state, in addition to what is required in the first section of this chapter, that the defendant either denies the plaintiff's right, or did some act amounting to such denial.

SEC. 629. [**Plaintiff's right terminating during pendency of action.**]—In an action for the recovery of real property, where the plaintiff shows a right to recover at the time the action was commenced, but it appears that his right has terminated during the pendency of the action, the verdict and judgment must be according to the fact, and the plaintiff may recover for withholding the property.

SEC. 630. [**Two trials allowed.**]—In an action for the recovery of real property, the party against whom judgment is rendered may, at any time during the term at which the judgment is rendered, demand another trial by notice on the journal, and thereupon the judgment shall be vacated, and the action shall stand for trial at the next term.

SEC. 631. [**Same.**]—No further trial can be had in such action, except upon appeal, unless for good cause shown, as in other actions.

SEC. 632. [**Occupying claimants.**]—The parties in an action for the recovery of property may avail themselves, if entitled thereto, of the relief of the statutes in force for the relief of occupying claimants of land.

SEC. 633. [**Waste—Damages.**]—If a guardian, tenant for life or years, joint tenant or tenant in common of real property, commit waste thereon, he is liable to pay three times the damages which have resulted from such waste, to the person entitled to sue therefor.

SEC. 634. [**Same—Judgment of forfeiture and conviction.**]—Judgment of forfeiture and conviction may be rendered against the defendant, whenever the amount of damages so recovered is more than two-thirds the value of the interest such defendant has in the property wasted, and when the action is brought by the person entitled to the reversion.

SEC. 635. [**Same—By whom.**]—Any person whose duty it is to prevent waste, and who has not used reasonable care and diligence to prevent it, is deemed to have committed it.

SEC. 636. [**Wilful trespass—Damages.**]—For wilful trespass, injuring any timber, tree, or shrub on the land of another, or in the street or highway in front of another's cultivated ground, yard, or town lot, or on the public grounds of any town, or any land held by this state, for any purpose whatever, the trespasser shall pay treble damages at the suit of any person entitled to protect or enjoy the property aforesaid.

SEC. 637. [**Same—Wood from uncultivated lands.**]—Nothing herein contained authorizes the recovery of more than the just value of the timber taken from uncultivated wood land for the repair of a public highway or bridge in its immediate neighborhood.

SEC. 638. [**Remaindermen—Reversioners.**]—The owner of an estate in remainder or reversion, may maintain either of the aforesaid actions for injuries done to the inheritance, notwithstanding any intervening estate for life or years.

SEC. 639. [**Same—Heirs.**]—An heir, whether a minor or of full age, may maintain these actions for injuries done in the time of his ancestors as well as in his own time, unless barred by the statute of limitations.

SEC. 640. [**Lands sold on execution.**]—Where lands or tenements are sold by virtue of an execution, the purchaser at such sale may maintain his action against any person, for either of the causes above mentioned, occurring or existing after his purchase.

Sec. 641. [**Timber used for repairs.**]—This provision is not intended to prevent the person who occupies the lands, in the meantime, from using them in the ordinary course of husbandry, or from using timber for the purpose of making suitable repairs thereon.

Sec. 642. [**Same—When deemed waste.**]—But if for this purpose he employ timber vastly superior to that required for the occasion, he will be deemed to have committed waste, and will be liable accordingly.

CHAPTER II.—ACTIONS ON OFFICIAL SECURITIES.

Sec. 643. [**By whom and how brought.**]—When an officer, executor, or administrator within this state, by misconduct or neglect of duty, forfeits his bond or renders his sureties liable, any person injured thereby, or who is by law entitled to the benefit of the security may bring an action thereon, in his own name, against the officer, executor, or administrator, and his sureties, to recover the amount to which he may be entitled by reason of the delinquency. The action may be instituted and proceeded in on a certified copy of the bond, which copy shall be furnished by the person holding the original thereof.

Sec. 644. [**Several delinquencies.**]—A judgment in favor of a party for one delinquency, does not preclude the same or another party from an action on the same security for another delinquency.

CHAPTER III.—PROCEEDINGS UPON MANDAMUS.

Sec. 645. [**Office of writ.**]—The writ of mandamus may be issued to any inferior tribunal, corporation, board, or person, to compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust or station. But though it may require an inferior tribunal to exercise its judgment, or proceed to the discharge of any of its functions it cannot control judicial discretion.

Sec. 646. [**When not issuable—Party interested.**]—This writ may not be issued in any case where there is a plain and adequate remedy in the ordinary course of the law. It may issue on the information of the party beneficially interested.

Sec. 647. [**Commands of writs.**]—The writ is either alternative or peremptory. The alternative writ must state concisely the facts showing the obligation of the defendant to perform the act, and his omission to perform it, and command him, that immediately upon the receipt of the writ, or at some other specified time, he do the act required to be performed, or show cause before the court whence the writ issued, at a specified time and place, why he has not done so; and that he then and there return the writ, with his certificate of having done as he is commanded. The peremptory writ must be in a similar form, except that the words requiring the defendant to show cause why he has not done as commanded, must be omitted.

Sec. 648. [**Which writ issued.**]—When the right to require the performance of the act is clear, and it is apparent that no valid excuse can be given for not performing it, a peremptory mandamus may be allowed in the first instance. In all other cases, the alternative writ must first be issued.

Sec. 649. [**Motion for writ—Notice.**]—The motion for the writ must

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Sec. 643. In action by a private person, obligee of bond is not a necessary party, even where a reformation of bond is part of the relief sought. 4 Neb. 566. Whether legatee alone can bring an action on bond of executor, *quaere.* 9 Neb. 290. This section is limited to cases of private injury. 9 Neb. 434. See note to sections 32, 92. See note to chap. 10, "Bonds and Oaths—Official," *ante.*

Sec. 645. 1 Neb. 173. 2 Id. 7. 4 Id. 53, 161, 267, 413. 5 Id. 147. 6 Id. 92, 295, 464. 7 Id. 133. 8 Id. 94, 119, 291. 9 Id. 148, 506. 10 Id. 19, 28, 36, 50, 63, 207, 363, 384, 476. 11 Id. 105, 107, 175, 266, 361. 12 Id. 232, 252, 425. 13 Id. 223, 278, 523. 14 Id. 22, 203, 267, 506. 15 Id. 147, 267, 442. 16 Id. 39. 17 Id. 116, 131, 313, 567, 645, 660. 18 Id. 426, 506, 512. 19 Id. 151, 164, 222, 484, 697. 20 Id. 123, 473, 595, 610. See also Chap. 71, Part I, *ante.*

Sec. 647. 5 Neb. 96. 7 Id. 133. 8 Id. 93, 293. 9 Id. 460. 10 Id. 20. 13 Id. 278. 14 Id. 508.

Sec. 649. 4 Neb. 260. 8 Id. 92, 98. 5 Id. 96. 7 Id. 133. 9 Id. 459.

be made upon affidavit, and the court may require a notice of the application to be given to the adverse party, or may grant an order to show cause why it should not be allowed, or may grant the writ without notice.

SEC. 650. [**Allowance—Service—Contempt.**]—The allowance of the writ must be endorsed thereon, signed by a judge of the court granting it, and the writ must be served personally upon the defendant. If the defendant duly served neglect to return the same, he shall be proceeded against, as for contempt.

SEC. 651. [**Answer.**]—On the return day of the alternative writ, or such further day as the court may allow, the party on whom the writ shall have been served, may show cause, by answer made, in the same manner as an answer to a petition in a civil action.

SEC. 652. [**Same—Default—New matter.**]—If no answer be made, a peremptory mandamus must be allowed against the defendant. If an answer be made containing new matter, the same shall not in any respect conclude the plaintiff, who may, on the trial or other proceeding, avail himself of any valid objection to its sufficiency, or may countervail it by proof, either in direct denial or by way of avoidance.

SEC. 653. [**Pleadings.**]—No other pleading or written allegation is allowed, than the writ and answer. These are the pleadings in the case, and have the same effect and are to be construed and may be amended in the same manner as pleadings in a civil action; and the issues thereby joined must be tried, and the further proceedings thereon had in the same manner as in a civil action.

SEC. 654. [**Damages.**]—If judgment be given for the plaintiff, he shall recover the damages which he shall have sustained, to be ascertained by the court or a jury, or by referees, in a civil action, and costs; and a peremptory mandamus shall also be granted to him without delay.

SEC. 655. [**Same—Bar to other action.**]—A recovery of damages by virtue of this chapter, against a party, who shall have made a return to a writ of mandamus, is a bar to any other action against the same party for the making of such return.

SEC. 656. [**Disobedience—Contempt—Fine.**]—Whenever a peremptory mandamus is directed to any public officer, body, or board, commanding the performance of any public duty, specially enjoined by law, if it appear to the court that such officer, or any member of such body or board, has without just excuse, refused or neglected to perform the duty so enjoined, the court may impose a fine not exceeding five hundred dollars, upon every such officer, or member of such body or board. Such fine, when collected, shall be paid into the treasury of the county where the duty ought to have been performed; and the payment thereof is a bar to an action for any penalty incurred by such officer, or member of such body or board, by reason of his refusal or neglect to perform the duty so enjoined.

TITLE XIX.—JURIES.

SEC. 657. [**Persons competent.**]—All *free white* males residing in any of the counties of this state, having the qualifications of electors, and being over the age of twenty-one years, and of sound mind and discretion, and not being judges of the supreme court or district courts, clerks of the supreme or district courts, sheriffs, coroners, or jailers, or subject to any bodily infirmity amounting to a disability, and who have not been convicted of a criminal offense, punishable by imprisonment in the penitentiary, and are not subject to disability for the commission of any offense which by special provision of law does or shall disqualify them, are and shall be competent persons to serve on all grand and petit juries, within their counties respectively; *Provided,* That persons over sixty years of age, ministers of the gospel, probate judges, county commissioners, licensed attorneys, practicing physicians, postmasters, and carriers of the United States mails, shall not be compelled to serve as jurors.

SEC. 653. 3 Neb. 253. 17 Id. 66.
SEC. 657. Colored men competent. 2 Neb. 222. See 16 Neb. 384

SEC. 658. Fifteen days before terms of District Court, County Commissioners shall select names of sixty persons as jurors, and furnish list to Clerk in five days; and Clerk will preserve list, and place tickets in a box; and ten days before term, Clerk and Sheriff shall draw from box twenty-four names as petit jurors, and sixteen for grand jurors.

SEC. 661. Clerk shall forthwith issue venire, stating therein the date of Court's meeting; and Sheriff shall serve same five days before the term; but no person shall be summoned as a juror more than once in two years.

SEC. 664. When the officer fails to make service of venire, or when all the persons summoned as grand or petit jurors do not appear before the district courts, or whenever at any general or special term, or at any period of a term for any cause there is no panel of grand jurors or petit jurors, or the panel is not complete, said court may order the sheriff, deputy sheriff, or coroner to summon without delay, good and lawful men, having the qualifications of jurors, and each person summoned, shall forthwith appear before the court, and if competent, shall serve on the grand jury or petit jury as the case may be, unless such person may be excused from serving, or lawfully challenged.

SEC. 667. [**Failure to appear—Neglect of officers—Penalty.**]—If any person summoned to appear as grand juror or petit juror, fails, refuses or neglects to appear, such person shall be considered guilty of contempt of the court, and may be fined by the court in any sum not less than five dollars nor more than fifty dollars; and if any person, when a second order or attachment is issued, neglects or refuses to appear, such person may be fined as above provided, and imprisoned by the court not longer than ten days in the county jail; and if the county commissioners in any county neglect or fail to select and furnish to the clerk names of persons as hereinbefore provided, such persons so offending may be fined by the court not less than five dollars nor more than fifty dollars; and if any clerk of the district court, or deputy clerk, or sheriff, deputy sheriff, or coroner, neglects or fails to perform the duties imposed by this chapter, the person so offending shall be considered guilty of contempt of court, and may be fined by the court not less than five dollars nor more than fifty dollars; and if guilty of gross misconduct in office and contempt, may be imprisoned by the court not longer than thirty days in the county jail.

SEC. 668. [**Packing jury—Penalty.**]—If a sheriff or other officer, corruptly, or through favor or ill will, summon a juror, with the intent that such juror shall find a verdict for or against either party, or shall summon a grand juror from like motives, with intent that such grand juror shall or shall not find an indictment or presentment against any particular individual, he shall be fined not exceeding five hundred dollars, and forfeit his office, and be forever disqualified from holding any office in this state.

TITLE XX.—CONTEMPTS.

SEC. 669. [**Power of court to punish—When.**]—Every court of record shall have power to punish by fine and imprisonment, or by either, as for criminal contempt, persons guilty of any of the following acts: *First.* Disorderly, contemptuous or insolent behavior towards the court, or any of its officers, in its presence. *Second.* Any breach of the peace, noise or other disturbance tending to interrupt its proceedings. *Third.* Wilful disobedience of, or resistance wilfully offered to any lawful process or order of said court *Fourth.* Any wilful attempt to obstruct the proceedings, or hinder the due administration of justice in any suit proceedings or process pending before the courts. *Fifth.* The contumacious and

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SEC. 665. Cited 20 Neb. 237.

SEC. 669. Judgment reviewable on error. Trial by jury not allowed. 13 Neb. 449 Garnishment proceedings as a defense. 12 Neb. 616. And see 13 Neb. 139.

unlawful refusal of any person to be sworn or affirmed as a witness, and when sworn or affirmed, the refusal to answer any legal and proper interrogatory. [R. S. 512. G. S. 645.]

SEC. 670. [**How punished.**]—Contempts committed in the presence of the court may be punished summarily; in other cases, the party, upon being brought before the court, shall be notified of the accusation against him, and have a reasonable time to make his defense.

SEC. 671. [**Same—Indictment.**]—Persons punished for contempt under the preceding provisions, shall nevertheless be liable to indictment, if such contempt shall amount to an indictable offense; but the court before which the conviction shall be had, may, in determining the punishment, take into consideration the punishment before inflicted in mitigation of the sentence.

SECS. 672, 673, 674. [**Omitted. Same provisions secs. 1096, 1097, 1098.**]

TITLE XXI.*—APPEALS FROM THE DISTRICT TO THE SUPREME COURT.

SEC. 675. [**Appeals in equity.**]—SEC. 1. That in actions in equity either party may appeal from the judgment or decree rendered or final order made by the district court, to the supreme court of the state; the party appealing shall within six months after the date of the rendition of the judgment or decree, or the making of the final order, procure from the clerk of the district court and file in the office of the clerk of the supreme court, a certified transcript of the proceedings had in the cause in the district court, containing the pleadings, the judgment or decree rendered or final order made therein, and all the depositions, testimony and proofs offered in evidence on the hearing of the cause, and have the said cause properly docketed in the supreme court; and on failure thereof, the judgment or decree rendered or the final order made in the district court shall stand and be proceeded in as if no appeal had been taken.

SEC. 676. [**Testimony reduced to writing.**]—SEC. 2. In actions hereinafter heard and determined, when the proofs and testimony are taken orally before the court on the hearing of the cause, the same shall be reduced to writing, in form similar to bills of exception, and be allowed by the judge hearing the cause, as in cases at law.

SEC. 677. [**Undertaking.**]—SEC. 3. No appeal in any case in equity, now pending and undetermined, or which shall hereafter be brought shall operate as a supersedeas, unless the appellant, or appellants, shall within twenty days next after the rendition of such judgment or decree, or the making of such final order, execute to the adverse party a bond with one or more sureties as follows: *First.* When the judgment, decree, or final order appealed from directs the payment of money, the bond shall be in double the amount of the judgment, decree, or final order, conditioned that the appellant, or appellants, will prosecute such appeal without delay, and pay all condemnation money and costs which may be found against him, or them, on the final determination of the cause in the supreme court. *Second.* When the judgment, decree, or final order directs the execution of a conveyance or other instrument, the bond shall be in such sum as shall be prescribed by the district court, or judge thereof in vacation, conditioned that the appellant, or appellants, will prosecute such appeal without delay, and will abide and perform the judgment or decree rendered or final order which shall be

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SEC. 675. Remedy not exclusive. 4 Neb. 557. 7 Id. 9. Time cannot be enlarged 1 Neb. 113. 2 Id. 65. 4 Id. 131. 20 Id 104. Time begins at date of judgment. Id. Appeal brings up case for trial de novo. 4 Neb. 583. 7 Id. 459. 17 Id. 163. Appeal lies from order overruling motion to set sale aside. 7 Neb. 459. And from order confirming sale in vacation. 8 Neb. 298. And decree granting divorce. 12 Neb. 73. Only from final order, judgment, or decree. 10 Neb. 511. Award of arbitrators under herd law. 6 Neb 273. Order sustaining demurrer to petition in equity. 6 Neb. 136. Judgment dismissing action and for costs. 11 Neb. 363. Judgment making injunction perpetual. 12 Neb 624. But appeal does not lie in mandamus cases. 13 Neb. 233. Nor in action at law. 2 Neb. 18. 6 Id 381. Nor from order sustaining demurrer on ground of misjoinder. 4 Neb. 567. Nor after stay taken. 9 Neb. 122. 12 Id. 580. 20 Id. 315. Nor from judgment of justice in trial of right of property. 10 Neb. 50. Nor from order vacating temporary injunction. 10 Neb. 441 And not in favor of defendant from judgment on default until motion to set same aside 7 Neb. 476. 12 Id 54. But if plaintiff treat appeal as valid, he cannot object. 11 Neb 48. Effect of defendant entering appearance but absenting himself on day of trial. 12 Neb. 424. 14 Id. 248 Appeal does not lie from order of county board of equalization of taxes. 3 Neb 39. Nor from order granting new trial. 5 Neb. 193. Nor from order allowing alimony *pendente lite*. 18 Id. 463.

SEC. 677. Amount of bond discretionary. 8 Neb. 305. Must contain conditions prescribed. 19 Neb. 221.

made by the supreme court in the cause. *Third.* When the judgment, decree, or order directs the sale or delivery of possession of real estate, the bond shall be in such sum as the court, or judge thereof in vacation, shall prescribe, conditioned that the appellant, or appellants, will prosecute such appeal without delay, and will not during the pendency of such appeal commit, or suffer to be committed, any waste upon such real estate.

Sec. 678. [**Same—Approval—Supersedeas.**]—Sec. 4. Before any bond executed as aforesaid shall operate as a supersedeas, the execution of the same, and the sufficiency of the sureties therein, must be approved by the clerk of the court in which the judgment or decree was rendered or the final order was made.

TITLE XXII.—Boats. [Repealed. Gen. Stat. 713.]

TITLE XXIII.—Informations.

Sec. 704. [**Filed against whom.**]—An information may be filed against any person unlawfully holding or exercising any public office or franchise within this state, or any office in any corporation created by the laws of this state, or when any public officer has done or suffered any act which works a forfeiture of his office, or when any persons act as a corporation within this state without being authorized by law, or if, being incorporated, they do or omit acts which amount to a surrender or forfeiture of their rights and privileges as a corporation, or when they exercise powers not conferred by law.

Sec. 705. [**By whom.**]—Such information may be filed by the prosecuting attorney of the proper county whenever he deems it his duty so to do.

Sec. 706. [**Same.**]—He must file such information when directed to do so by the governor, the legislative assembly, or the district court.

Sec. 707. [**Petition—Contents.**]—Such information shall consist of a plain statement of the facts which constitute the grounds of the proceeding, addressed to the court which shall stand for an original petition.

Sec. 708. [**Same—Filing—Summons.**]—Such statement shall be filed in the clerk's office, and summons issued and served in the same manner as hereinbefore provided for the commencement of actions in the district court.

Sec. 709. [**Answer.**]—The defendant shall appear and answer such information in the usual way, and issue being joined it shall be tried in the ordinary manner.

Sec. 710. [**Claimant—Rights of parties determined.**]—When the defendant is holding an office to which another is claiming the right, the information should set forth the name of such claimant, and the trial must, if practicable, determine the rights of contesting parties.

Sec. 711. [**Judgment of claimant.**]—If judgment be rendered in favor of such claimant, he shall proceed to exercise the functions of the office, after he has qualified as required by law.

Sec. 712. [**Same—Delivery of books and papers.**]—The court, after such judgment, shall order the defendant to deliver over all books and papers in his custody or under his control belonging to said office.

Sec. 713. [**Same—Damages.**]—When the judgment has been rendered in favor of the claimant, he may at any time within one year thereafter bring suit against the defendant and recover the damages he has sustained by reason of the act of the defendant.

Sec. 714. [**Several claimants.**]—When several persons claim to be entitled to the same office or franchise, an information may be filed against all or any portion thereof, in order to try their respective rights thereto.

Sec. 715. [**Ouster.**]—If the defendant be found guilty of unlawfully holding or exercising any office, franchise, or privilege, or if a corporation be found to have violated the law by which it holds its existence, or in any other manner to have done acts which amount to a surrender or forfeiture of its privileges, judgment shall be rendered that such defendant be ousted, and altogether excluded from such office, franchise, or privilege, and also that he pay the costs of the proceeding.

Sec. 715. Court in its discretion may grant supersedeas on judgment of ouster. But its refusal to do so cannot be reviewed on error. 10 Neb. 249. See 15 Id. 446. 16 Id. 36, 549. 18 Id. 282.

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SEC. 796. Parents and guardians may voluntarily relinquish control of minors for adoption by another, before County Judge; degree shall be conclusive; and the child adopted shall take surname of person adopting.

the same, and all relations of parent and child, agreeable to such stipulations and the decree of the probate court, shall attach, and such child or children, if so stated in such decree, shall be subject to the exclusive control and custody of such parent or parents, and shall possess and enjoy all the rights, privileges, inheritance, heirships, and immunities of children born in lawful wedlock.

SEC. 801. [**Fees.**]—The probate judge shall be entitled to charge the same fees for such services as now are or hereafter may be provided by law for like services in other cases.

TITLE XXVI.—PARTITION.

SEC. 802. [**Petition.**]—When the object of the action is to effect the partition of real property among several joint owners, the petition must describe the property, and the several interests and estates of the several joint owners thereof, if known. All tenants in common, or joint tenants of any estate in land may be compelled to make or suffer partition of such estate or estates in the manner hereinafter prescribed. [Amended 1871, 112.]

SEC. 803. [**Same—Unknown owners.**]—If the number of shares or interests is known, but the owners thereof are unknown, or if there are or are supposed to be, any interests which are unknown, contingent or doubtful, these facts must be set forth in the petition with reasonable certainty.

SEC. 804. [**Lien holders—Parties.**]—Creditors having a specific or general lien upon all or any portion of the property may or may not be made parties, at the option of the plaintiff.

SEC. 805. [**Liens upon undivided interest.**]—If the lien is upon one or more undivided interests of any of the parties, it shall, after partition or sale, remain a charge upon those particular interests or the proceeds thereof. But the due proportion of costs is a charge upon those interests paramount to all other liens.

SEC. 806. [**Answer.**]—The answers of the defendants must state, among other things, the amount and nature of their respective interests. They may deny the interest of any of the plaintiffs, and by supplemental pleading, if necessary, may deny the interests of any of the other defendants.

SEC. 807. [**Reply.**]—Where there are two or more plaintiffs they may reply jointly, or either of them may reply to any or all the answers of the defendants.

SEC. 808. [**Issues.**]—Issues may thereupon be joined and tried between any of the contesting parties, the question of costs on such issues being regulated between the contestants agreeably to the principles applicable to other cases.

SEC. 809. [**Proof of title.**]—Each of the parties appearing, whether as plaintiff or defendant, must exhibit his documentary proof of title, if he has any, and must file the same, or copies thereof, with the clerk.

SEC. 810. [**Pleadings taken as true.**]—If the statements in the petition and answers are not contradicted in the manner aforesaid, or by the documentary proof exhibited as above required, they shall be taken as true.

SEC. 811. [**Judgment.**]—After all the shares and interests of the parties have been settled in any of the methods aforesaid, judgment shall be rendered confirming those shares and interests, and directing partition to be made accordingly.

SEC. 812. [**Referee to make partition.**]—Upon entering such judgment the court shall appoint referees to make partition into the requisite number of shares.

SEC. 813. [**Special allotments.**]—For good and sufficient reasons appearing to the court, the referees may be directed to allot particular portions of the land to particular individuals. In other cases the shares must be made as nearly as possible of equal value.

Sec. 814. [**Referees report.**]—If it appears to the referees that partition cannot be made without great prejudice to the owners, they shall so report to the court.

Sec. 815. [**Order of sale.**]—If satisfied with such report the court shall cause an order to be entered, directing the referees to sell the premises so situated and shall also fix the terms of sale.

Sec. 816. [**Referee—Security.**]—Before proceeding to sell, the referees shall each give security, to be approved by the court or judge thereof, conditioned for the faithful discharge of his duties. At any time thereafter the court may require further and better security.

Sec. 817. [**Sale—How conducted—Notice.**]—The same notice of sale shall be given as when lands are sold on execution by the sheriff, and the sale shall be conducted in like manner.

Sec. 818. [**Referees report of sale.**]—After completing said sale, the referees must report their proceedings to the court, with a description of the different parcels of land sold to each purchaser, and the price bid therefor, which report shall be filed with the clerk.

Sec. 819. [**Report of incumbrances by the clerk.**]—After making the order of sale as aforesaid, the court shall direct the clerk to report whether there be any general incumbrance by mortgage, judgment, or otherwise, upon any portion of the property.

Sec. 820. [**Same—By referee.**]—If deemed advisable, the court may appoint a referee to inquire into the nature and amount of incumbrances, and report accordingly. From that report an appeal lies to the court.

Sec. 821. [**Same—Duties.**]—The referee shall give the parties interested at least five days notice of the time and place when he will receive proof of the amount of such incumbrances.

Sec. 822. [**Same—Proof.**]—In taking such proof he may receive, with other evidence, the affidavit of the parties interested.

Sec. 823. [**Incumbrances—Payment.**]—If any incumbrance be ascertained to exist, the proceeds of the sale of that portion, after the payment of costs, or so much thereof as is necessary, shall if the owner consent, be paid over to the incumbrancer.

Sec. 824. [**Same—Proceeds of sale.**]—If the owner object to the payment of such incumbrance, the money shall be retained or invested by order of the court to await final action in relation to its disposition, and notice thereof shall be forthwith given to the incumbrancer, unless he has already been made a party.

Sec. 825. [**Issue between owner and incumbrancer.**]—The court may direct an issue to be made up between the incumbrancer and the owner, which shall be decisive of their respective rights.

Sec. 826. [**Estates for life or years.**]—If an estate for life or years be found to exist as an incumbrance upon any part of said property, and if the parties cannot agree upon the sum in gross which they will consider an equivalent for such estate, the court shall direct the avails of the incumbered property to be invested and the proceeds to be paid to the incumbrancer during the existence of the incumbrance.

Sec. 827. [**Proceedings not delayed.**]—The proceedings in relation to the incumbrances shall not delay the distribution of the proceeds of other shares in respect to which no difficulties exist.

Sec. 828. [**Security from parties.**]—The court in its discretion may require all or any of the parties before they receive the moneys arising from any sale authorized in this title, to give satisfactory security, to refund such moneys with interest, in case it afterward appears that such parties were not entitled thereto.

SEC. 829. [**Sale Confirmed—Conveyance.**]—If the sales aforesaid be approved and confirmed by the court, an order shall be entered directing the referees, or any two of them, to execute conveyances pursuant to such sales. But no conveyance can be made until all the money is paid, without receiving from the purchaser a mortgage of the land so sold, or other equivalent security.

SEC. 830. [**Conveyance—Effect.**]—Such conveyances so executed, being recorded in the county where the premises are situate, shall be valid against all subsequent purchasers, and also against all persons interested at the time who were made parties to the proceedings in the mode pointed out by law.

SEC. 831. [**Proceeds of shares—Investment.**]—If the owner of any share thus sold has a husband or wife living, and if such husband and wife do not agree as to the disposition that shall be made of the proceeds of such sale, the court must direct it to be invested in real estate under the supervision of such person as it may appoint, taking the title in the name of the owner, of the share sold as aforesaid.

SEC. 832. [**Sale disapproved—Money returned.**]—If the sales are disapproved, the money paid and the securities given must be returned to the persons respectively entitled thereto.

SEC. 833. [**Partition—How made—Surveyor.**]—When a partition is deemed proper the referees must make out the shares by visible monuments, and may employ a competent surveyor and the necessary assistants to aid them.

SEC. 834. [**Referees report—Plat.**]—The report of the referees must be in writing, signed by at least two of them. It must describe the respective shares with reasonable particularity, and be accompanied by a plat of the premises.

SEC. 835. [**Shares drawn by lot.**]—Unless the shares are allotted to their respective owners by the referees as hereinbefore contemplated, the clerk shall number the shares and then draw the names of the future owners by lot.

SEC. 836. [**Partition in part.**]—When partition can be conveniently made of part of the premises, but not of all, one portion may be partitioned and the other sold as hereinafter provided.

SEC. 837. [**Report set aside.**]—On good cause shown, the report may be set aside and the matter again referred to the same or other referees.

SEC. 838. [**Judgment.**]—Upon the report of the referees being confirmed, judgment thereon shall be rendered that the partition be firm and effectual forever.

SEC. 839. [**Defendants, how served.**]—The defendants may be served in the same manner as in ordinary civil action by summons, or by publication as provided in this code, and when all the parties in interest have been duly served, any of the proceedings herein prescribed shall be binding and conclusive upon them all. If only a portion of such parties be served, they only shall be bound by such proceedings. [Amended 1871, 112.]

SEC. 840. [**Judgment—Effect.**]—The judgment of partition shall be presumptive evidence of title in all cases, and as between the parties themselves it is conclusive evidence thereof, subject, however, to be defeated by proof of a title paramount to, or independent of, that under which the parties held as joint tenants or tenants in common.

SEC. 841. [**Costs.**]—All the costs of the proceedings in partition shall be paid in the first instance by the plaintiffs, but eventually by all the parties in proportion to their interests, except those costs which are created by contests above provided for.

SEC. 842. [**Incumbrancers—Appearance.**]—Any person claiming to hold an incumbrance upon any portion of the property involved in the suit, may, in default of the owner, appear and act as his representative in any of the proceedings under this title.

SEC. 843. [**Contingent interests.**]—Persons having contingent interests in such property may be made parties to the proceedings, and the proceeds of the property so situated (or the property itself, in case of partition), shall be subject to the order of the court until the right becomes fully vested.

SEC. 844. **[Share of absent owner.]**—The ascertained share of any absent owner shall be retained, or the proceeds invested for his benefit.

TITLE XXVII.—FORECLOSURE OF MORTGAGES BY ACTION.

SEC. 845. **[Petition—Where filed.]**—All petitions for the foreclosure or satisfaction of mortgages shall be filed in the district court in chancery where the mortgaged premises are situated.

SEC. 846. **[Sale—Decreed by court.]**—Whenever a petition shall be filed for the foreclosure or satisfaction of a mortgage, the court shall have power to decree a sale of the mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the mortgage, and the cost of suit.

SEC. 847. **[Decree for deficiency.]**—When a petition shall be filed for the satisfaction of a mortgage, the court shall not only have the power to decree and compel the delivery of the possession of the premises to the purchaser thereof, but on the coming in of the report of sale, the court shall have power to decree and direct the payment by the mortgagor of any balance of the mortgage debt that may remain unsatisfied after a sale of the mortgaged premises, in the cases in which such balance is recoverable at law; and for that purpose may issue the necessary execution, as in other cases, against other property of the mortgagor.

SEC. 848. **[Bar to action for debt.]**—After such petition shall be filed, while the same is pending, and after a decree rendered thereon, no proceedings whatever shall be had at law for the recovery of the debt secured by the mortgage, or any part thereof, unless authorized by the court.

SEC. 849. **[Other security—Additional parties.]**—If the mortgage debt be secured by the obligation or other evidence of debt of any other person besides the mortgagor, the complainant may make such person a party to the petition, and the court may decree payment of the balance of such debt remaining unsatisfied after a sale of the mortgaged premises, as well against such other person as the mortgagor, and may enforce such decree as in other cases.

SEC. 850. **[Petition—Allegation as to debt.]**—Upon filing a petition for the foreclosure or satisfaction of a mortgage, the complainant shall state therein whether any proceedings have been had at law for the recovery of the debt secured thereby, or any part thereof, and whether such debt, or any part thereof, has been collected and paid.

SEC. 851. **[Judgment at law—Bar to foreclosure.]**—If it appear that any judgment has been obtained in a suit at law for the money demanded by such petition, or any part thereof, no proceedings shall be had in such case, unless, to an execution against the property of the defendant in such judgment, the sheriff or other proper officer shall have returned that the execution is unsatisfied in whole or in part, and that the defendant has no property whereof to satisfy such execution except the mortgaged premises.

SEC. 852. Sheriff or other authorized power may sell under foreclosure decree; and is liable on his bond for proceeds; shall make deed, which is as good as if made by mortgagor. Any surplus money is to be brought into Court; and if not called for in three months, to be put at interest. Petitions in foreclosure for installments or interest, where a balance is not due, will be dismissed if defendant pays installment overdue; and parcels may be ordered sold, and the order remain as security for subsequent payments; and this remedy is cumulative until all installments are paid.

SEC. 860. If, in any of the foregoing cases, it shall appear to the court that the mortgaged premises are so situated that a sale of the whole will be most beneficial to the parties, the decree shall, in the first instance, be entered for the sale of the whole premises accordingly.

SEC. 861. **[Same—Proceeds—Application.]**—In such case the proceeds of such sale shall be applied as well to the interest, portion, or installment of the principal due as towards the whole or residue of the sum secured by such mortgage, and not due and payable at the time of such sale, and if such residue do not bear interest, then the court may direct the same to be paid with a rebate of the legal interest, for the time during which such residue shall not be due and payable, or the court may direct the balance of the proceeds of such sale, after paying the sum due, with costs, to be put out at interest, for the benefit of the complainant, to be paid to him as the installments or portions of the principal or interest may become due, and the surplus for the benefit of the defendant, his representatives, or assigns, to be paid to them on the order of the court.

TITLE XXVIII.—ARBITRATION.

SEC. 862. **[Controversies submitted.]**—All controversies which might be the subject of civil actions, may be submitted to the decision of one or more arbitrators as hereinafter provided.

SEC. 863. **[Written agreement to submit.]**—The parties themselves, or those persons who might lawfully have controlled a civil action in their behalf for the same subject matter, must sign a written agreement specifying particularly what demands are to be submitted, the names of the arbitrators, and the court by which the judgment on their award is to be rendered.

SEC. 864. **[Acknowledgment before justice.]**—They shall then appear before some justice of the peace of the county and acknowledge the instrument by them signed to be their free act and deed.

SEC. 865. **[Demands submitted.]**—The submission may be of some particular matters or demands, or of all demands which the one party has against the other, or of all mutual demands on both sides.

SEC. 866. **[Submission by order of court.]**—A submission to arbitrators of the subject matter of a suit may also be made by an order of court, upon an agreement of parties, after suit is commenced.

SEC. 867. **[Rules applicable.]**—All the rules prescribed by law in cases of referees are applicable to arbitrators, except as herein otherwise expressed, or except as otherwise agreed upon by the parties.

SEC. 868. **[Revocation of submission.]**—Neither party shall have the power to revoke the submission without the consent of the other.

SEC. 869. **[Default in appearance.]**—If either party neglect to appear before the arbitrators, after due notice, they may nevertheless proceed to hear and determine the cause upon the evidence which is produced before them.

SEC. 870. **[Award—When made.]**—If the time within which the award is to be made is fixed in the submission, no award made after that time shall have any legal effect, unless made upon a recommitment of the matter by the court to which it is reported.

SEC. 871. **[Same—Filing.]**—If the time of filing the award is not fixed in the submission, it must be filed within one year from the time such submission is signed and acknowledged, unless by mutual consent the time is prolonged.

SEC. 872. **[Same—In writing.]**—The award must be in writing, and shall be delivered by one of the arbitrators to the court designated in the agreement, or it may be enclosed and sealed by them and transmitted to the court, and not opened until the court so orders.

SEC. 873. **[Same—Docketing—Notice.]**—The cause shall be entered on the docket of the court at the term to which the award is returned, and shall

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SEC. 862. Statutory mode not exclusive. 3 Neb. 389. Arbitrators must pass on all material matters submitted; general finding sufficient. 15 Id. 491.

SEC. 872. Award must state facts found, and conclusions of law separately. 1 Neb 459 17 Id. 598.

SEC. 873. Giving of notice is matter of discretion. 3 Neb. 228 18 Id. 573. Defenses. 6 Neb. 87. Arbitrators may be witnesses. Id 89. A party seeking to avoid award for fraud, etc , must set forth facts on which he bases his belief. 4 Neb, 543. Appeal lies. Id, 6 Id. 273. Award may be attacked by motion to reject and set aside; if overruled and judgment entered on award motion for new trial not necessary. 17 Neb. 596

be called up and acted upon in its order. But the court may require actual notice to be given to either party, when it appears necessary and proper, before proceeding to act on the award.

Sec. 874. [**Same—Rejection by court.**]—The award may be rejected by the court for any legal and sufficient reasons, or it may be recommitted for a rehearing to the same arbitrators, or any others agreed upon by the parties.

Sec. 875. [**Same—Effect—Judgment.**]—When the award has been confirmed, it shall be filed and entered on the record, and shall have the same force and effect as the verdict of a jury. Judgment may be entered and execution issued accordingly.

Sec. 876. [**Appeal.**]—When an appeal is taken from such judgment, copies of the submission and award, together with all affidavits, shall be returned to the supreme court.

Sec. 877. [**Costs.**]—If there is no provision in the submission respecting costs, arbitrators may award them at their discretion.

Sec. 878. [**Fees.**]—The compensation of the arbitrators shall be two dollars per day, for the time actually and necessarily spent, unless the court fix a less amount; and the fees of the justice of the peace shall be twenty-five cents for making out the agreement of submission (in case he does so), and the like amount for taking and certifying the acknowledgment thereto.

Sec. 879. [**Construction of act.**]—Nothing herein contained shall be construed to affect in any manner the control of the district court over the parties, the arbitrators or their award, nor to impair or affect any action upon an award, or upon any bond or other engagement to abide an award.

TITLE XXIX.—General Provisions.

Sec. 880. [**Process.**]—The style of all process shall be, "The State of Nebraska,————county." It shall be under the seal of the court from whence the same shall issue, shall be signed by the clerk, and dated the day it issued. [Const. sec. 24, Art. VI.]

Sec. 881. [**When sheriff party.**]—An order for a provisional remedy or any other process, in an action wherein the sheriff is a party, or is interested, shall be directed to the coroner. If both these officers are interested, the process shall be directed to and executed by a person appointed by the court or judge.

Sec. 882. [**Service by authorized person.**]—The court or judge, for good cause, may appoint a person to serve a particular process or order, who shall have the same power to execute it which the sheriff has. The person may be appointed on the motion of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the fees allowed to the sheriff for similar services.

DUTIES OF CLERK.

Sec. 882. [**Issuing process—Precipe.**]—All writs and orders for provisional remedies and process of every kind, shall be issued by the clerks of the several courts. Before they shall be issued, a precipe shall be filed with the clerk, demanding the same; which precipe shall be for the direction of the clerk, and not material to the papers in the case after the issuing of such writ or process.

Sec. 884. [**Filing papers.**]—It is the duty of the clerk of each of the courts, to file together and carefully preserve in his office, all papers delivered to him for that purpose, in every action or special proceeding.

Sec. 885. [**Same—Endorsement of date.**]—He shall endorse upon every paper filed with him, the day of filing it; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office.

SEC. 899. [**Court rules—Revision by supreme court.**]—The judges of the supreme court shall, during the month of the first January after this code shall take effect, and every two years thereafter, meet at the capitol of the state, and revise their general rules, and make such amendments thereto as may be necessary to carry into effect the provisions of this code; and they shall make such further rules consistent therewith, as they may deem proper. The rules so made shall apply to the supreme court and the district courts.

SEC. 900. [**Application of code to pending suits.**]—The provisions of this code do not apply to proceedings in actions or suits pending when it takes effect. They shall be conducted to final judgment or decree, in all respects as if it had not been adopted; but the provisions of this code shall apply after a judgment, order, or decree heretofore or hereafter rendered, to the proceedings to enforce, vacate, modify, or reverse it.

SEC. 901. [**Rights secured by existing laws.**]—Rights of civil action given or secured by existing laws, shall be prosecuted in the manner provided by this code, except as provided in the following section. If a case ever arise in which an action for the enforcement or protection of a right, or the redress or prevention of a wrong, cannot be had under this code, the practice heretofore in use may be adopted so far as may be necessary to prevent a failure of justice.

SEC. 902. [**Proceedings not affected by code.**]—Until the legislature shall otherwise provide, this code shall not affect proceedings on *habeas corpus, quo warranto,* or to assess damages for private property taken for public uses; nor proceedings under the statutes for the settlement of estates of deceased persons; nor proceedings under statutes relating to dower, divorce, or alimony, or to establish or set aside a will; nor proceedings under statutes relating to apprentices, arbitration, bastardy, or insolvent debtors; nor any special statutory remedy not heretofore obtained by action; but such proceedings may be prosecuted under the code, whenever it is applicable.

SEC. 903. [**Proceedings under statutory actions.**]—Where, by general or special statute, a civil action, legal or equitable, is given, and the mode of proceeding therein is prescribed, this code shall not affect the proceedings under such statute, until the legislature shall otherwise provide; but in all such cases, as far as it may be consistent with the statute giving such action, and practicable under this code, the proceedings shall be conducted in conformity thereto. Where the statute designates by name or otherwise the kind of action, but does not prescribe the mode of proceeding therein, such action shall be commenced and prosecuted in conformity to this code; where the statute gives an action, but does not designate the kind of action, or prescribe the mode of proceeding therein, such action shall be held to be the civil action of this code, and proceeded in accordingly.

SEC. 901. Cited 19 Neb. 449.

TITLE XXX.—Justices of the Peace.

CHAPTER I.—JURISDICTION.

Sec. 904. **[Limited to county.]**—The jurisdiction of justices of the peace in civil cases shall, unless otherwise directed by law, be limited to the county wherein they may have been elected, and where they shall reside.

Sec. 905. **[Subject matter.]**—Justices of the peace, within and co-extensive with their respective counties, shall have jurisdiction and authority: *First.* To administer an oath or affirmation authorized or required by law to be administered. *Second.* To take acknowledgment of deeds, mortgages, and other instruments of writing. *Third.* To solemnize marriages. *Fourth.* To issue subpœna for witnesses and coerce their attendance in causes or matters pending before them, or other cause or matter wherein they may be required to take depositions. *Fifth.* To try the action for forcible entry and detention, or the detention only, of real property. *Sixth.* To proceed against security for costs and bail for the stay of execution on their dockets. *Seventh.* To issue attachments, and proceed against the goods and effects of debtors in certain cases. *Eighth.* To issue executions on judgments rendered by them. *Ninth.* To proceed against constables, failing to make return, making false return, or failing to pay over money collected on execution, issued by such justice. *Tenth.* To try the right of the claimant to property taken in execution, or on attachment.

Sec. 906. **[Same—Trespass.]**—Justices of the peace shall have jurisdiction in actions for trespass on real estate, where the damages demanded for such trespass shall not exceed two hundred dollars, and no claim of title to such real estate set up by the defendant shall take away or affect the jurisdiction hereby given. [Amended Feb. 28. Took effect June 1, 1881.]

Sec. 907. **[No jurisdiction.]**—Justices shall not have cognizance of any action: *First.* To recover damages for an assault, or assault and battery. *Second.* In any action for malicious prosecution. *Third.* In actions against justices of the peace or other officers for misconduct in office, except in the cases provided for in this title. *Fourth.* In actions for slander, verbal or written. *Fifth.* In actions on contracts for real estate. *Sixth.* In actions in which the title to real estate is sought to be recovered, or may be drawn in question, except actions for trespass on real estate, which are provided for in this title.

CHAPTER II.—COMMENCEMENT OF SUITS AND PROCEEDINGS IN ARREST AND ATTACHMENT.

Sec. 908. **[Action, how commenced.]**—Actions before justices of the peace are commenced by summons or by the appearance and agreement of the parties without summons. In the former the action is deemed commenced, upon delivery of the writ to the constable to be served; and he shall note thereon the time of receiving the same. In the latter case the action is deemed commenced at the time of docketing the case.

Chap. I. 1 Neb. 363. 5 Id. 421. 4 Id. 412. 6 Id. 535. 9 Id. 152, 473. 10 Id 491. 12 Id. 37, 541. 13 Id. 517. 14 Id. 449, 461. 15 Id. 85, 665, 669. 16 Id. 53, 234, 446. 18 Id. 234, 365. 19 Id. 344, 393, 529. 20 Id 50.

Sec. 908. 6 Neb. 411.

SEC. 909. Justice may appoint guardian *ad litem*; summons may be served by any person to whom it is directed; must state generally nature and amount of claim; on default, judgment cannot exceed amount thus stated; made returnable within twelve days, and three days before trial; served personally or by copy at residence; on guardian or father of minor under fourteen.

SEC. 916. One hour after time set is allowed for appearance.

SEC. 917. An order for the arrest of the defendant in a civil action, shall be made by the Justice of the Peace before whom the same is brought, when there is filed in his office an affidavit of the plaintiff, his authorized agent or attorney, made before any person authorized by law to administer oaths, stating the nature of the plaintiff's claim, that it is just, the amount thereof as near as may be, and establishing one or more of the following particulars: *First.* That the defendant has removed or begun to remove any of his property out of the county, with the intent to defraud his creditors. *Second.* That the defendant has begun to convert his property, or any part thereof, into money, for the purpose of defrauding his creditors. *Third.* That he has property or rights in action which he fraudulently conceals. *Fourth.* That he has assigned, removed, or disposed of, or begun to assign, remove, or dispose of his property, or any part thereof, with intent to defraud his creditors. *Fifth.* That the defendant fraudulently contracted the debt or incurred the obligation for which suit is about to be brought. The affidavit shall also contain a statement of the facts claimed to justify the belief in the existence of one or more of the above particulars.

SEC. 919. Order will not issue until bond given, conditioned to pay damages of arrest if wrongfully obtained; must be accompanied with affidavit; if trial is continued for more than forty-eight hours, defendant may be discharged, on giving bond to pay claim. This remedy by arrest may be had after ordinary judgment, in manner aforesaid.

ATTACHMENT.

SEC. 925. The plaintiff shall have an order of attachment against the property of the defendant, in a civil action before a Justice of the Peace, for the recovery of money before or after the commencement thereof, when there is filed in his office an affidavit of the plaintiff, his agent or attorney, showing the nature of the plaintiff's claim, that it is just, the amount which the affiant believes the plaintiff ought to recover, and the existence of some one or more of the following particulars: *First.* That the defendant, or one of the several defendants, is a foreign corporation, or is a non-resident of the state; or, *Second.* Has absconded, with intent to defraud his creditors: or, *Third.* Has left the county of his residence to avoid the service of a summons; or, *Fourth.* So conceals himself, that a summons cannot be served upon him; or, *Fifth.* Is about to remove his property, or a part thereof, out of the county, with the intent to defraud his creditors; or, *Sixth.* Is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or, *Seventh.* Has property or rights in action, which he conceals; or, *Eighth.* Has assigned, removed, or disposed of, or is about to dispose of, his property, or a part thereof, with intent to defraud his creditors; or, *Ninth.* Fraudlently contracted the debt or incurred the obligation for which suit is about to be, or has been, brought.

SEC. 926. Bond is required, not exceeding double the amount of claim, to the effect that plaintiff will pay damages sustained, if wrongfully obtained; return day same as summons, or forthwith if issued pending action; if more than one shall be served in the order of receipt, and in presence of two credible persons, and one appraisement sufficient; and officer, with two residents of county, shall make a sworn appraisement in detail; defendant may give delivery bond, for property or to pay judgment. If defendant cannot be personally served with summons, three weeks newspaper notice shall be given. When continued not less than forty or more than sixty days, if property is perishable or livestock, it may be sold as on execution, and money brought into Court.

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paid over to the justice, and applied as other money realized from the sale of property attached is applied.

SEC. 934. [**Garnishment—Affidavit—Notice.**]—When the plaintiff, his agent, or attorney, shall make oath in writing that he has good reason to believe, and does believe, that any person or corporation, to be named, and within the county where the action is brought, has property of the defendant (describing the same) in his possession, if the officer cannot come at such property, he shall leave with such garnishee a copy of the order of attachment, with a written notice, that he appear before the justice at the return of the order of attachment, and answer as provided in section nine hundred and thirty-six.

SEC. 935. [**Garnishee, how served.**]—The copy of the order and the notice shall be served upon the garnishee, as follows: If he be a person, they shall be served upon him personally, or left at his usual place of residence; if a corporation, they shall be left with the president or other head of the same, or the secretary, cashier, or managing agent thereof.

SEC. 936. [**Same—Answer.**]—The garnishee shall appear before the justice, in accordance with the command of the notice, and shall answer, under oath, all questions put to him touching the property of every description, and credits of the defendant in his possession or under his control, and he shall disclose, truly, the amount owing by him to the defendant, whether due or not, and, in case of a corporation, any stock therein held by or for the benefit of the defendant, at or after the service of the notice.

SEC. 937. [**Same—Payment by—Discharge—Costs.**]—A garnishee may pay the money owing to the defendant by him, to the officer having the order of attachment, or into the court. He shall be discharged from liability to the defendant for any money so paid, not exceeding the plaintiff's claim. He shall not be subjected to costs beyond those caused by his resistance of the claim against him; and if he disclose the property in his hands, or the true amount owing by him, and deliver or pay the same according to the order of the court, he shall be allowed his costs.

SEC. 938. [**Same—Failure to answer.**]—If the garnishee do not appear and answer, as required by section nine hundred and thirty-six, the justice may proceed against him by attachment, as for a contempt.

SEC. 939. [**Same—When debtor—Proceedings.**]—If the garnishee appear and answer, and it is discovered on his examination that at or after the service of the order of attachment and notice upon him he was possessed of any property of the defendant, or was indebted to him, the justice may order the delivery of such property and the payment of the amount owing by the garnishee into the court, or may permit the garnishee to retain the property or the amount owing, upon the execution of an undertaking to the plaintiff, by one or more sufficient sureties to the effect that the amount shall be paid, or the property forthcoming, as the court may direct.

SEC. 940. [**Further proceedings against garnishee.**]—If the garnishee fail to appear and answer, or if he appear and answer, and his disclosure is not satisfactory to the plaintiff, or if he fail to comply with the order of the justice to deliver the property and pay the money owing into the court, or give the undertaking required in the preceding section, the plaintiff may proceed against him in an action in his own name, as in other cases; and thereupon such proceedings may be had as in other actions and judgment may be rendered in favor of the plaintiff, for the amount of property and credits of every kind of the defendant, in the possession of the garnishee, and for what shall appear to be owing by him to the defendant, and for the costs of the proceedings against the garnishee. If the plaintiff proceed against the garnishee by action, for the cause that his disclosure was unsatisfactory, unless it appear in the action that such disclosure was incomplete, the plaintiff shall pay the costs of such action. The judgment in this action may be enforced as judgments in other cases

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SECS. 939, 940. Liability of garnishee. 9 Neb. 416. See note to secs. 207, 244, *ante*.

When the claims of the plaintiff in attachment are satisfied, the defendant in the attachment may, on motion, be substituted as the plaintiff in the judgment.

Sec. 941. [**Judgment, when rendered—Discharge of garnishee.**]—Final judgment shall not be rendered against the garnishee until the action against the defendant in attachment has been determined; and if, in such action, judgment be rendered for the defendant in attachment, the garnishee shall be discharged and recover costs. If the plaintiff shall recover against the defendant in attachment, and the garnishee shall deliver up all property, moneys, and credits of the defendant, in his possession, and pay all the moneys from him due as the court may order, the garnishee shall be discharged and the costs of the proceedings against him shall be paid out of the property and moneys so surrendered, or as the court may think right and proper.

Sec. 942. [**Judgment for defendant.**]—If judgment be rendered in the action for the defendant, the attachment shall be discharged, and the property attached or its proceeds shall be returned to him.

Sec. 943. [**Same—For plaintiff—Satisfaction.**]—If judgment be rendered for the plaintiff it shall be satisfied as follows: So much of the property remaining in the hands of the officer, after applying the moneys arising from the sale of perishable property, if any, whether held by legal or equitable right, as may be necessary to satisfy the judgment, shall be sold by order of the justice, under the same restrictions and regulations as if the same had been levied on by execution; and the money arising therefrom, with the amount which may be recovered from the garnishee, shall be applied to satisfy the judgment and costs. If there be not enough to satisfy the same, the judgment shall stand, and execution may issue thereon for the residue, in all respects as in other cases. Any surplus of the attached property or its proceeds, shall be returned to the defendant.

Sec. 944. [**Property retaken, when.**]—The justice may order the officer to repossess himself, for the purpose of selling it, of any of the attached property which may have passed out of his hands without being sold or converted into money, and the officer shall, under such order, have the same power to take the property as he would have under an order of attachment.

Sec. 945. [**Intervening claimants.**]—If any of the property which has been attached, be claimed by any person other than the defendant, the claimant may have the validity of such claim tried, and such proceedings must be had thereon, with like effect, as in case the property had been seized upon execution issued by the justice and claimed by a third person.

Sec. 946. [**Priority of attachments.**]—Where several attachments are executed on the same property, or the same persons are made garnishees, the justice issuing the first order, served on the motion of any of the plaintiffs, may determine the amounts and priorities of the several attachments, and the proceeds shall be applied accordingly.

Sec. 947. [**Return to writ.**]—The officer shall return upon every order of attachment what he has done under it. The return must show the property attached and the time it was attached. When garnishees are served, their names, and the time each was served, must be stated. The officer shall also return, with the order, all undertakings given under it.

Sec. 948. [**Order binds property—When.**]—An order of attachment binds the property attached from the time of service, and the garnishee shall stand liable to the plaintiff in attachment for all property, moneys and credits in his hands, or due from him to the defendant, from the time he is served with the written notice, mentioned in section nine hundred and thirty-four; but when property is attached in the hands of a consignee, or other person having a prior lien, his lien thereon shall not be affected by the attachment.

Sec. 949. [**Property released on bail.**]—If the defendant, or other person in his behalf, at any time before judgment, cause an undertaking to be executed to the plaintiff by one or more sureties resident in the county, to be approved by the justice, in double the amount of the plaintiff's claim, to be stated in his affidavit, to the effect that the defendant shall perform the judgment of the justice, the attachment in such action shall be discharged and restitution made of any property taken under it, or the proceeds thereof; such undertaking shall also discharge the liability of a garnishee in such action, for any property of the defendant in his hands.

Sec. 950. [**Action transferred to district court.**]—If in any case where an order of attachment has been issued by a justice of the peace, it shall appear from the return of the officer and from the examination of the garnishee, that no property, moneys, rights, credits or effects of the defendant have been taken under the attachment, but that the defendant is the owner of an interest in real estate in the county, the justice before whom said action is pending shall, at the request of the plaintiff, forthwith certify his proceedings to the district court of the proper county, and thereupon the clerk of said court shall docket said cause, and the action shall be proceeded with in said court, in all respects as if the same had originated therein.

CHAPTER III.—BILL OF PARTICULARS.

Sec. 951. [**Filing.**]—In all cases before a justice, the plaintiff, his agent or attorney, shall file with such justice a bill of the particulars of his demand, and the defendant, if required by the plaintiff, his agent or attorney, shall file a like bill of the particulars he may claim as a set-off; and the evidence on the trial shall be confined to the items set forth in said bills.

Sec. 952. [**Contents.**]—The bill of particulars must state, in a plain and direct manner, the facts constituting the cause of action, or the claim to be set-off.

Sec. 953. [**Amendments.**]—The bill of particulars may be amended at any time before the trial, or during the trial, or upon appeal, to supply any deficiency or omission in the items, when by such amendments substantial justice will be promoted. If the amendment be made at the time of or during the trial, and it be made to appear to the satisfaction of the justice, by oath, that an adjournment is necessary to the adverse party in consequence of such amendment, an adjournment must be granted. The justice may also, in his discretion, require as a condition of an amendment, the payment of costs to the adverse party, to be fixed by the justice; but such payment cannot be required unless an adjournment is made necessary by the amendment.

CHAPTER IV.—CHANGE OF THE PLACE OF TRIAL.

Sec. 954. [**Grounds for.**]—The place of trial may be changed if on the return of process, or at any time before trial shall have commenced, it shall be made satisfactorily to appear to the justice of the peace before whom any cause is instituted, or is pending for trial, by the affidavit of either of the parties in the case, that such justice is a material witness for either party, or if a jury be demanded by the adverse party, then that he cannot, as he verily believes, have a fair and impartial trial in the precinct or place for which said justice may have been elected, on account of the bias or prejudice of the citizens thereof.

Sec. 955. [**Where transferred.**]—If the place of trial be changed on account of the justice being a material witness in the cause, such cause may be transferred for trial before some other justice of the peace in the same precinct. If the place of trial be changed on account of the bias or prejudice of the citizens of such precinct or place, the case shall be taken to some justice in an adjoining precinct in the same county.

Sec. 956. [**Transfer of papers and record.**]—The justice granting such change shall deliver or transmit the papers in the cause, together with a certified transcript of the proceedings before him, to the justice to whom such change may be granted, who shall proceed therein and have the same jurisdiction, powers and

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Sec. 951. 10 Neb. 491. 12 Id. 40, 54. 13 Id. 220. 14 Id. 250, 446. 15 Id. 441, 646. 16 Id. 328, 444. 18 Id. 185. 20 Id. 323.

duties, in all respects whatever, as if suit had been originally instituted before him.

SEC. 957. [**Costs.**]—Before any such change shall be allowed, the costs, as specified in the next following section, shall be paid by the party applying for such change.

SEC. 958. [**Same.**]—When such change is at the instance of the plaintiff, he shall be taxed with all the costs which have accrued and which shall accrue in the cause, until such transcript and papers shall be delivered to the justice to whom such cause is removed for trial; and when on the application of the defendant, he shall be taxed for the costs which have accrued for issuing subpœnas for witnesses and service thereof, witness fees and costs of the justice for transferring the cause to the docket of the other justice.

SEC. 958 *a*. [**Same—Interest—Bias of justice.**]—SEC. 1. That in all civil and criminal proceedings before justices of the peace, any defendant in such proceedings may apply for and obtain a change of venue, by filing an affidavit in the case made by the defendant, his agent or attorney, stating that the defendant cannot, as affiant verily believes, have a fair and impartial hearing in the case on account of the interest, bias, or prejudice of the justice, and by paying the costs now required to be paid by defendant on change of venue, for the causes and in the cases mentioned in chapter four of title thirty, part two of the revised statutes, and thereupon the proceedings shall be transferred to the nearest justice of the peace, to whom the said objections do not apply, of the same county, to be proceeded with in the manner pointed out for the transfer and procedure in cases on change of venue for cause mentioned in said chapter four. [1871 § 1, 110.]

SEC. 958 *b*. [**Same—Application—When made.**]—SEC. 2. The application shall be made before entering upon the merits of the case by the introduction and reception of evidence; and no second change of venue shall be allowed for the same cause in the same proceeding.

CHAPTER V.—ADJOURNMENTS.

SEC. 959. [**On motion of justice.**]—Upon the return day, if a jury be required, or if the justice be actually engaged in other official business, he may adjourn the trial without the consent of either party, as follows: *First.* Where a party is in attendance who is not a resident of the county, or where the defendant is in attendance under arrest, the adjournment not to exceed forty-eight hours, and the defendant, if under arrest, to continue in custody. *Second.* In other cases, not to exceed eight days, unless by consent of parties. If the trial be not adjourned, it must take place immediately upon the return of the summons.

SEC. 960. [**On application of party.**]—The trial may be adjourned upon the application of either party, without the consent of the other, for a period not exceeding thirty days, as follows: The party asking the adjournment must, if required by his adversary, prove by his own oath, or otherwise, that he cannot, for want of material testimony which he expects to procure, safely proceed to trial.

SEC. 961. [**Same—Further adjournments.**]—An adjournment may be had either at the return day, or at any subsequent time to which the cause may stand adjourned, on the application of either party, for a period longer than thirty days, but not to exceed ninety days from the time of the return of the summons, upon compliance with the provisions of the preceding section, and upon proof by oath of the party, or otherwise, to the satisfaction of the justice, that such party cannot be ready for trial before the time to which he desires an adjournment for want of material evidence, describing it, that the delay has not been made necessary by any act or negligence on his part since the action was commenced, and that he expects to procure the evidence at the time stated by him.

SEC. 958 a, b. "An act to allow a change of venue in civil and criminal proceedings before justices of the peace, on account of the interest, bias or prejudice of the justice." Laws 1871, 70. G. S. 718. Took effect Mar. 25, 1871. Affiant should state objection, if any, to nearest justice. Only one **change allowed for same cause.** 10 Neb. 82. These provisions do not apply to county courts. 10 Neb. 439.

CHAPTER VI.—WITNESS.

SEC. 962. **[Subpœna—When issued.]**—Any justice may issue subpœnas to compel the attendance of witnesses to give evidence on any trial pending before himself, or for the purpose of taking depositions, or to perpetuate testimony.

SEC. 963. **[Same—Service.]**—A subpœna may be served by a constable or any other person, and shall be served by reading the same or stating the contents thereof to the witness, or by leaving a copy thereof at his usual place of residence.

SEC. 964. **[Fees.]**—When not served by a constable or sheriff, or some person deputed for that purpose by a justice, no fees shall be charged in the suit for serving it.

SEC. 965. **[Costs.]**—If any witness, having been subpœnaed, attend and be not examined by either party, the costs of such witness shall be paid by the party ordering the subpœna, unless the adverse party, by confessing the matter, or otherwise, render unnecessary the examination of such witness.

SEC. 966. **[Contempt of subpœna—Arrest, etc.]**—Whenever it shall appear to the satisfaction of a justice, by proof made before him, that any person has been duly served with a subpœna to appear and give testimony before him in any matter in which he has authority to require such witness to appear and testify, that his testimony is material, and that he refuses or neglects to attend as such witness in conformity with such subpœna, the justice shall issue a warrant for the arrest of the delinquent, for the purpose of compelling his attendance, and punishing his disobedience.

SEC. 967. **[Same—Punishment.]**—When a person arrested is brought before the justice, or when a person in attendance refuses to testify as a witness, and no valid excuse be shown, the justice may impose a fine on him not exceeding five dollars. An entry of such fine, stating the reason therefor, must be made by the justice in his docket, and thereupon shall have the effect of a judgment in favor of the state of Nebraska against the delinquent, and may be enforced against his person or property.

SEC. 968. **[Neglect of witness—Liability.]**—Every person subpœnaed as aforesaid, and neglecting to appear, or refusing to testify, shall also be liable to the party in whose behalf he shall have been subpœnaed, for all damages which such party shall sustain by reason of such delinquency.

SEC. 969. **[Deposition—When taken.]**—Depositions may be taken to be read in a cause pending before a justice of the peace, in like manner, and subject to the same restrictions and rules of law as in cases pending in the district court.

CHAPTER VII.—THE TRIAL.

SEC. 970. **[When held.]**—At the time appointed for trial, if no jury shall have been demanded by either party, the justice shall proceed to try the action, shall hear the proofs, and determine the cause according to law and the right.

SEC. 971. **[Appearance without process.]**—Where parties agree to enter, without process, before a justice, any action of which such justice has cognizance, such justice shall enter the same on his docket, and proceed to trial, judgment, and execution, in all respects in the same manner as if summons had been issued, served and returned.

SEC. 972. **[Jury trial—Adjournment.]**—In all civil actions, after the appearance of the defendant, and before the court shall proceed to inquire into the merits of the cause, either party may demand a jury to try the action, which jury shall be composed of six good and lawful men, having the qualifications of electors, unless the parties shall agree on a less number. When a jury is demanded, the trial of the cause must be adjourned until a time fixed for the return of the jury. If neither party desire an adjournment, the time must be determined by the justice, and must be on the same day, or within the next two days the jury must be immediately selected, as herein provided.

CHAP. VII. 6 Neb. 149. 411. 13 Id. 221. 255. 15 Id 628 17 Id. 324. 18 Id. 185.

SEC. 973. From list of eighteen names, each party will, alternately, strike six, and remaining six are the jury; who shall be personally served; and failing or refusing to serve are liable as in case of witnesses refusing to testify; and talesmen may be summoned when necessary; and their verdict shall be publicly delivered; may be discharged if unable to agree; new trial may be granted in four days, if verdict obtained by fraud, partiality, or other undue means; of which prevailing party shall have reasonable notice; and appeal lies on claims of more than twenty dollars; and if appellant fails to recover more, shall pay costs of appeal, including attorney fee; before judgment, successful party must pay each juror fifty cents; and on disagreement, party calling jury pays said fee, to be taxed, in either case, as costs; and Justice will sign true bill of exceptions, on request.

ARBITRATION.

SEC. 989. By consent, causes may be submitted to three sworn arbitrators; to be summoned unless they are present; and to have same fee as jurors; award may be set aside for same reasons as the granting a new trial; judgment thereon not appealable, unless appellant files an affidavit stating reasons.

TRIAL OF RIGHT OF PROPERTY.

SEC. 996. At least one day before sale of property on a levy, any claimant may have his right thereto tried, on giving three days' notice of claim, and time and place of trial; it may be a jury trial; trial to be had, and judgment given, as in ordinary action.

SEC. 999. Actions may be dismissed without prejudice—voluntarily, or when plaintiff fails to appear.

SEC. 1001. Judgment against an absent defendant may be set aside, on motion filed within ten days, if he pay costs, and give plaintiff five days' notice of time and place of re-trial.

SEC. 1004. Costs not recoverable when plaintiff refused to accept defendant's offer of specific sum in judgment, and fails to recover more; and judgment against a defendant liable to arrest must so state.

APPEALS.

SEC. 1006. Are given in all cases, not specifically denied; bond to be given within ten days; transcript filed within thirty days; within twenty days thereafter, plaintiff must file petition, and thereafter pleadings as in ordinary cases; appellant failing, appellee may file transcript, and claim a dismissal or confirmation of the judgment; if both parties fail, Clerk shall certify case to Justice for execution; costs not recoverable, if recovery is not increased; and surety in appeal liable on dismissal; appeal not allowed on confessed judgments; or jury trials for less than twenty dollars; or trial of right of property.

FORCIBLE ENTRY AND DETAINER.

SEC. 1019. Justices have jurisdiction to inquire, in his county; against tenants in default for rent; on execution sales; on administrator's sales and partition; and where occupant has no color of title.

SEC. 1022. Three days before suit, claimant shall serve party in possession with notice to quit; the complaint must be in writing, describing the premises, and be made part of the record; summons in usual form, and served three days before trial; on defendant's default, trial will proceed; continuance not to exceed eight days unless defendant gives bond to pay rent.

SEC. 1028. Jury may be called as in other cases; verdict may be general or special.

SEC. 1029. The justice shall enter the verdict upon his docket, and shall render such judgment in the action as if the facts authorizing the finding of such verdict had been found to be true by himself.

SEC. 1030. Exceptions to the opinion of the justice, in cases under this chapter upon questions of law and evidence may be taken by either party, whether tried by a jury or otherwise; or either party may appeal from the judgment rendered by such justice by giving bond, with two responsible sureties to be approved by the justice, conditioned: If the plaintiff appeals to satisfy the final judgment and costs; if the defendant appeals to satisfy the final judgment and costs, and pay a reasonable rent for the premises during the time he wrongfully withholds the same. [Amended 1883, chap. LXXXII.]

SEC. 1031. [**Writ of execution.**]—Where a judgment of restitution shall be entered by a justice, he shall, at the request of the plaintiff, his agent or attorney, issue a writ of execution thereon, which shall be in the following form, as near as practicable:

THE STATE OF NEBRASKA, } ss.
——— COUNTY. }

To any Constable or Sheriff of ——— County:

WHEREAS, In a certain action for the forcible entry and detention (*or* the forcible detention, *as the case may be,*) of the following described premises, to wit: ———, lately tried before me, wherein ——— was plaintiff, and ——— was defendant, judgment was rendered on the —— day of ———, A. D. ——, that the plaintiff have restitution of said premises; and also that he recover costs in the sum of ———. You therefore are hereby commanded to cause the defendant to be forthwith removed from said premises, and the said plaintiff to have restitution of the same; also that you levy of the goods and chattels of the said defendant, and make the costs aforesaid, and all accruing costs; and of this writ make legal service and due return.

Witness my hand, this —— day of ——, A. D. ——.

———, *Justice of the Peace.*

[Const. sec. 24, Art. VI.]

SEC. 1032. [**Same—Execution of writ.**]—The officer shall, within ten days after receiving the writ, execute the same by restoring the plaintiff to the possession of the premises, and shall levy and collect the costs, and make return as upon other executions. If the officer shall receive a notice from the justice that the proceedings have been stayed by an allowance of a writ of error, he shall immediately delay all further proceedings, upon the execution; and if the premises have been restored to the plaintiff, he shall immediately place the defendant in the possession thereof, and return the writ, with his proceedings and costs taxed thereon.

CHAPTER XI.—REPLEVIN.

SEC. 1033. [**Jurisdiction.**]—The plaintiff may recover possession of specific personal property of less value than two hundred dollars, before a justice of the peace as herein provided. [Amended Feb. 28. Took effect June 1, 1881.]

SEC. 1034. [**Affidavit.**]—An action for this purpose shall not be brought until there is filed in the office of the justice, an affidavit of the plaintiff, his agent, or attorney, showing: *First.* A description of the property claimed. *Second.* That the plaintiff is the owner thereof, or has a special ownership therein, stating the facts in relation thereto, and that he is entitled to the immediate possession of the property. *Third.* That the property is wrongfully detained by the defendant. *Fourth.* That it was not taken in execution on any order or judgment against said plaintiff, or for the payment of any tax, fine, or amercement assessed against him, or by virtue of an order of delivery issued under this chapter, or any other *mesne* or final process issued against said plaintiff.

SEC. 1035. [**Summons—Order.**]—Upon such affidavit being made, and filed with the justice, he shall issue a summons as in other cases, but in addition commanding the officer immediately to seize and take into custody, wherever they may be found in the county, the goods and chattels mentioned in the affidavit, and deliver the same to the plaintiff.

SEC. 1036. [**Same—Execution of writ.**]—The constable or sheriff shall execute the writ by taking the property therein mentioned; he shall also deliver a copy of the summons to the person charged with the unlawful detention of property, or leave such copy at his usual place of residence; and shall make return of the time and manner of service, the appraisment of property, and any undertaking taken by him.

SEC. 1037. [**Undertaking.**]—The officer shall not deliver to the plaintiff, his agent, or attorney, the property so taken, until there has been executed by one or more sufficient sureties of the plaintiff, a written undertaking to the defendant, in at least double the value of the property taken, but in no case less than fifty dollars, to the effect that the plaintiff shall duly prosecute the action and pay all costs and damages which may be awarded against him.

SEC. 1038. [**Same—Appraisement.**]—For the purpose of fixing the amount of the undertaking, the value of the property taken shall be ascertained by the oath of two responsible persons, whom the officer shall swear truly to assess the value thereof.

SEC. 1039. [**Same—Transfer to district court.**]—Whenever the appraised value of the property so taken shall exceed two hundred dollars, the justice shall certify the proceedings upon the said writ to the district court of his county, and thereupon shall file the original papers, together with a certified transcript of his docket entries, in the clerk's office of the said court; the case there to be for trial at the first term of said court on the original papers without further pleadings, except by the leave of the court granted on sufficient showing. [1881, chap. 30. Amended 1887, chap. 98. Took effect July 1, 1887.]

SEC. 1040. [**Undertaking—Failure to give.**]—If the undertaking required by section one thousand and thirty-seven, be not given within twenty-four hours from the taking of the property under said order, the officer shall return the property to the defendant. And if the officer deliver any property so taken, to the plaintiff, his agent, or attorney, or keep the same from the defendant without taking such security within the time aforesaid, or if he take insufficient security, he shall be liable to the defendant in damages.

SEC. 1041. [**Trial—When property delivered to plaintiff.**]—If the property has been delivered to the plaintiff, and judgment be rendered against him, or if he otherwise fail to prosecute his action to final judgment, the justice shall, on application of the defendant, or his attorney, impanel a jury to inquire into the right of property and right of possession of the defendant to the property taken. If the jury shall be satisfied that the said property was the property of the defendant at the commencement of the action, or if they shall find that the defendant was entitled only to the possession of the same, at such time, then, in either case they shall assess such damages for the defendant as are right and proper, for which, with costs of suit, the court shall render judgment for the defendant. And in all cases where the property has been delivered to the plaintiff, unless the jury shall find for the defendant, they shall also find whether the defendant had the right of property, or the right of possession only, at the commencement of the suit; and if they find either in his favor, they shall assess such damages as they think right and proper for the defendant, for which, with costs of suit, the court shall render judgment for the defendant.

SEC. 1042. [**Damages for detention.**]—In all cases, when the property has been delivered to the plaintiff, where the jury shall find for the plaintiff, on trial, or on inquiry of damages, they shall assess adequate damages to the plaintiff for the illegal detention of the property, for which, with costs of suit, the justice shall render judgment against the defendant.

SEC. 1043. [**Trial when property not delivered.**]—When the property claimed has not been taken, or has been returned to the defendant, for want of the undertaking required by section one thousand and thirty-nine, the action may proceed as one for damages only, and the plaintiff shall be entitled to such damages as are right and proper; but if the property be returned for want of the undertaking required by said section, the plaintiff shall pay all costs made by taking the same.

SEC. 1044. [**Execution of writ—Power of officer.**]—The officer, in executing the writ, may break open any building or enclosure in which the property claimed, or any part thereof, is concealed; but not until he has been refused an entrance into said building or enclosure, and the delivery of the property, after having demanded the same.

SEC. 1045. [**Suit on undertaking.**]—No suit shall be instituted on the

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CHAP. XI. Jurisdiction, 13 Neb. 516, 14 Id. 140. Finding and judgment. 14 Neb. 449, 451.

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SEC. 1047. Execution may issue within five years after judgment; if not appealed or stayed within ten days, shall issue without demand; stay of execution allowed on bond given as follows: ten dollars, sixty days; fifty dollars, ninety days; one hundred dollars, six months; except judgments against Justice for refusing payment of money collected; or against bail for stay; or on delivery bonds. If bail for stay leaves county, execution will issue at once; also, if bail make affidavit that he fears he will have to pay; but bail is not thereby discharged; when judgment goes against surety, he shall be subrogated; and Justice may require additional security; execution runs against principal first, and against surety for want of property of principal; and against the person, in cases where arrest is part of the judgment.

SEC. 1061. Prisoner will be discharged by officer if money is not furnished to pay for sustenance; beyond first ten days, debtor may be detained, if single one day for each dollar due, and if head of family one day for each two dollars due.

SEC. 1064. Officer liable if he fail to make levy or make return in thirty days; on return of no goods or the death of defendant, Justice must commence action on stay bond; ten day's written notice of sale shall be posted in four public places in the precinct where property is taken, and it shall be sold at a public place therein; the Justice and Officer prohibited from purchasing at sale, under penalty of one hundred dollars and damages to injured party; the Officer allowed reasonable pay for keeping stock, and his return shall specify each article of personalty and the price thereof; and if not sold shall return a schedule thereof; and may take a delivery bond. The interest of a landlord in growing crops is not affected by a levy on tenant's share.

CONSTABLES AND SHERIFFS.

SEC. 1079. Before a return of "not found" the officer shall go once to the defendant's usual place of residence; for serving process and preserving the peace, a Constable has the authority of a Sheriff throughout the county; and Officer shall pay money collected to the Justice when he makes return, unless he has paid the party; on failure shall be chargeable with twenty per cent. penalty.

SEC. 1085. All provisions of the "Code of Civil Procedure" that are applicable, extend to Justices.

SEC. 1086. Justices docket shall contain: *First.* Title of all actions. *Second.* Date of writ and affidavit on which arrest is ordered. *Third.* Bills of particulars. *Fourth.* What parties appear. *Fifth.* Adjournment. *Sixth.* Demand for jury, and names of jurors; names of witnesses, and who for. *Eighth.* Exceptions taken. *Ninth.* The verdict or a disagreement. *Tenth.* Judgment, date and cost items, *Eleventh.* Issuance of execution. *Twelfth.* Of transcript. *Thirteenth.* Appeal bond. *Fourteenth.* Bond for stay. *Fifteenth.* Satisfaction; and such entries are evidence to prove the facts; it shall also be indexed.

SEC. 1089. It is the duty of every Justice, upon the expiration of his term of office, to deposit with his successor, his official docket, as well his own as those of his predecessor which may be in his custody, together with all files and papers, laws and statutes, pertaining to his office, there to be kept as public records and property. If there be no successor elected and qualified, or if the office become vacant by death, removal from the county, or otherwise, before his successor is elected and qualified, the docket and papers in the possession of such Justice must be deposited with the nearest Justice in the county, there to be kept until a successor be chosen and qualified, then to be delivered over to such successor on request.

SEC. 1090. A Justice receiving by succession or on deposit, any such docket, papers, and laws, shall, if requested, give a receipt therefor to the person from whom he receives the same.

SEC. 1091. The Justice with whom the docket of another may be deposited, either during vacancy or as a successor is hereby authorized, while having such docket legally in his possession, to issue execution on any judgment there entered and unsatisfied, and not docketed in the district court, in the same manner and with the same effect as the justice by whom the judgment was rendered might have done; to take bail in appeals or for stay of execution, to issue certified transcripts of judgments on such docket, and proceed in all cases in like manner as if the same had been originally had or instituted before him.

SEC. 1092. [**Disability of justice—Proceedings.**]—In case of sickness or other disability, or necessary absence of a justice, at the time appointed for trial, another justice of the same county may, at his request, attend in his behalf, and shall thereupon become vested with the powers, for the time being, of the justice before whom the summons was returnable. In that case the proper entry of the proceeding before the attending justice, subscribed by him, must be made in the docket of the justice, before whom the writ was returnable. If the case be adjourned, the justice before whom the summons was returnable must resume jurisdiction.

SEC. 1093. [**Papers containing blanks void.**]—The summons, execution and every other paper made or issued by a justice, must be filled up without a blank to be filled by another; otherwise it is void.

SEC. 1094. [**Deputation to serve process.**]—A justice, at the request of a party, and on being satisfied that it is expedient, may specially depute any discreet person of suitable age, and not interested in the action, to serve a summons or execution with or without an order to arrest the defendants or to attach property. Such deputation must be in writing on the process.

SEC. 1095. [**Same—Fees.**]—The person so deputed has the authority of a constable, in relation to the service, execution, and return of such process, and is subject to the same obligation, but there can be no fee for his services taxed in the bill of costs.

SEC. 1096. [**Contempts punishable.**]—A justice may punish as for contempt, persons guilty of the following acts, and no others: *First.* Disorderly, contemptuous, or insolent behavior toward the justice, tending to interrrupt the due course of the trial, or other judicial proceedings before him. *Second.* A breach of the peace, boisterous conduct, or violent disturbance, tending to interrupt the due course of a trial or other judicial proceeding. *Third.* Wilful resistance in the presence of the justice, to the execution of a lawful order or process made or issued by him.

SEC. 1097. [**Same—Arrest—Punishment.**]—A warrant of arrest may be issued by such justice, on which the person so guilty may be arrested and brought before the justice, when an opportunity to be heard in his defense or excuse must be given. The justice may thereupon discharge him or may convict him for the offense and adjudge a punishment by fine or imprisonment, or both; such fine not to exceed twenty dollars, and such imprisonment ten days.

SEC. 1098. [**Same—Entry of judgment—Warrant.**]—The conviction, specifying particularly the offense and the judgment thereon, must be entered in his docket; a warrant of commitment to the jail of the county, until the fine be paid, or for the term of imprisonment, may then be issued; such warrant must contain a transcript of the entry in the docket, and the same must be executed by any constable or sheriff to whom it may be given, and by the jailer of the county.

SEC. 1099. [**Security for costs—Non-resident.**]—When a person intending to bring an action before a justice of the peace, is a non-resident of the county in which he intends to commence such action, the justice may, previous to his issuing process, require such person to give security for costs of suit; which may be done by depositing a sum of money, deemed by the justice to be sufficient to discharge the costs that may accrue in the action, or by giving an undertaking, with security approved by the justice, payable to the adverse party, for the payment of all costs that may accrue in the action. If any plaintiff or plaintiffs,

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SEC. 1094. 12 Neb. 41, 204. 15 Id. 523.

after commencing an action before a justice in the county in which he or they reside, afterwards remove out of the county, the justice may require such plaintiff or plaintiffs to deposit a sum of money, equal to the costs that have accrued, and that probably will accrue, or require, in place thereof, that such party give sufficient security for all costs that have accrued, or which may accrue in the action, and in default to do either, shall enter a nonsuit against the plaintiff or plaintiffs.

SEC. 1100. [**Evidence of debt—Filing.**]—In all actions instituted before a justice of the peace, founded upon any bond, bill, promissory note, or other instrument of writing, for the payment of a sum of money certain, of which the whole amount of money promised therein is due, it shall be the duty of the plaintiff, his agent or attorney, to file said bond, bill, promissory note, or other written evidence of indebtedness, upon which said suit is brought, with such justice of the peace; and if upon the trial, judgment shall be entered thereon, in favor of the plaintiff, such bond, bill, promissory note,or other instrument in writing, shall be retained by the justice so rendering judgment, who shall endorse thereon the sum for which he shall have entered judgment (provided the same shall in no wise exceed one hundred dollars), and shall subscribe his name thereto. And upon payment, or tender of the amount of such payment, together with the costs accruing thereon, or securing the payment of the same by putting in bail for the stay of execution, it shall not be lawful for the plaintiff to institute any other suit or suits upon such bond, bill, promissory note, or other instrument of writing, for the recovery of any other sum or sums, the payment of which is secured by the same bond, bill, promissory note, or other written evidence of indebtedness; *Provided*, That when an appeal shall be taken from the judgment of such justice, it shall be his duty to transmit any bond, bill, promissory note, or other written evidence produced before him on trial, to the clerk of the district court, to which such cause shall have been appealed, or or before the second day of the term of the court next after taking such appeal; *Provided, also*, That nothing herein contained shall be construed to lessen or in anywise affect the right which any creditors now have to demand from any justice of the peace, any joint and several obligation, for the purpose of prosecuting any party to said obligation, other than the party against whom judgment may have been rendered.

SEC. 1100 *a*. [**Proof of written instrument.**]—That in all civil actions before justices of the peace, in which the defendant has been served with summons in this state, it shall not be necessary to prove the execution of any bond, promissory note, bill of exchange, or other written instrument, or any indorsement thereon, upon which the action is brought, or set-off or counter-claim is based, unless the party sought to be charged as the maker, acceptor, or indorser, of such bond, promissory note, or bill of exchange, or other written instrument, shall make and file with the justice of the peace, before whom the suit is pending, an affidavit that such instrument was not made, given, subscribed, accepted, or indorsed by him. [G. S. § 1, 717.]

SEC. 1101. [**Justice purchasing judgment—Penalty.**]—It shall not be lawful for any justice of the peace to purchase any judgment upon any docket in his possession; and for so doing, and for every such offense, such justice shall forfeit and pay a sum not more than fifty dollars, nor less than ten dollars, to be recovered by an action before any court having jurisdiction thereof, and when collected, shall be paid into the treasury of the county where such offense was committed.

SEC. 1102. [**Application of code to pending suits.**]—The provisions of this title do not apply to proceedings in actions or suits pending when it takes effect. They shall be conducted to final judgment and determination in all respects as if it had not been adopted.

SEC. 1103. Justices have jurisdiction of the sum of two hundred dollars in general bond, until an execution in defendant's favor has been returned unsatisfied.

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PART II.

CRIMINAL PROCEDURE.

DEFINITIONS, ETC.

SEC. 246. Unless when otherwise provided, words used in this code in the present tense, include the future as well as the present. Words used in the masculine gender comprehend as well the feminine and neuter. The singular number includes the plural, and the plural the singular. The term "writing" includes printing. The term "oath" includes an affirmation.

SEC. 247. The term "felony" signifies such an offense as may be punished with death or imprisonment in the penitentiary. Any other offense is denominated a misdemeanor.

SEC. 248. The term "magistrate" in this code, when not otherwise expressly stated, is used to mean a Justice of the Peace, Probate Judge, Mayor of a city, or incorporated village, or Police Judge.

SEC. 249. The term "Prosecuting Attorney" signifies the same as District Attorney.

SEC. 252. "Person" includes county or private corporation.

SEC. 253. "Signature" means the mark of an illiterate person.

SEC. 255. The operation of existing laws is saved as to offenses before repeal.

SEC. 256. Limitation of prosecutions: Felony, three years; for fine or forfeiture in misdemeanor, eighteen months; or one year where penalty is imprisonment for three months, and fine is less than one hundred dollars; time occupied by appeal not counted. But for treason, arson, murder, and forgery, there is no limit.

SEC. 258. Sentence, for felony, disqualifies as elector, juror, or office holder, unless pardoned.

SEC. 260. Jurisdiction, of Justice, Mayor, Police Judge, and Probate Judge, are equal in matters arising under this code, and extend throughout their counties.

SEC. 261. Mayor can act (where there is a Police Judge) in cases of "urgency or necessity," only.

SEC. 262. District Judge may require security for the keeping of the peace, equally with the magistrates aforesaid.

SEC. 263. Constables have jurisdiction throughout the counties where they reside.

SEC. 264. If any person or persons, who may be charged with the commission of a crime or offense made punishable by the laws of this State, shall abscond or remove from

ty in which such crime or offense be charged to have been committed, it
awful for any sheriff, constable, or other person to apprehend the person
is so charged, and forthwith remove him, her, or them to the county in
e alleged crime may be said to have been committed, and deliver such
or persons to any magistrate in said county, who shall cause the person or
so delivered to be dealt with as the law may direct.

265. [**City and village marshals.**]—Every city, town or village
lawfully holding such office, shall be the appropriate ministerial officer of
e court or mayor's court of the city or town, or incorporated village, and
shall have all the powers and be charged with all the duties of constables
aking of arrests, serving process, and preserving the peace, as prescribed
ast two preceding sections in criminal matters.

266. [**Special constables.**]—That it shall be lawful for any justice
ace within this state, upon the written application of any three freeholders
ownship thereof, to appoint one or more special constables within such
p, whose duty it shall be to watch and guard the property of said free-
and to protect the same from all unlawful acts, and in the discharge of
ty they shall have authority to make arrests. The justice making such
nent shall make a memorandum thereof upon his docket, and the same
ntinue in force for one year, unless sooner revoked by such justice. The
es appointed by virtue of this section, shall be paid in full for their ser-
the freeholders for whose benefit they are appointed, and shall receive
pensation except from said freeholders.

CHAPTER XXVI.—PROCEDURE TO PREVENT CRIMES AND OFFENSES.

Sec. 267. [**Complaint to keep the peace.**]—Whenever any person [illegible] make complaint in writing, upon oath, before any justice of the peace, may[illegible]y city or incorporated village, police judge, or probate judge, that he has [illegible] cause to fear, and does fear, that another will commit any offense against [illegible] person or property of himself, his ward, or child, it shall be the duty of the magistrate before whom such complaint is made, to issue a warrant in the name [illegible] state to any constable of the county, commanding him forthwith to arrest the person complained of, and him to take before such magistrate, or any other magistrate named in this section, of the same county, to answer such complaint.

Sec. 268. [**Examination—Recognizance.**]—When the party complained of shall be brought before the magistrate, he shall be heard in his defense, and all witnesses produced shall be examined upon oath, and if, upon such examination, the magistrate shall be of the opinion there is just cause for the complaint, he shall order the person complained of to enter into recognizance, with good and sufficient security, in any sum not less than fifty dollars nor more than one thousand dollars, for his appearance before the district court, on the first day of the next term thereof, or forthwith, if it be term time of said court, and in the mean time that he shall keep the peace, and be of good behavior generally, and especially toward the person complaining.

Sec. 269. [**Commitment, in default of recognizance.**]—In default of such recognizance and security, as provided in the preceding section, the magistrate shall commit the person complained of to the jail of the county, there to remain until discharged by due course of law.

Sec. 270. [**Accused discharged—Costs against complainant.**]—But if the magistrate, on the examination, shall be satisfied that there is no just cause for the complaint, it shall be his duty to discharge the accused, and render judgment, in the name of the state, against the party complaining, for the costs of the prosecution and the same shall be collected by execution, as in civil cases.

Sec. 267. A complaint by a wife that she "has just cause to fear," etc., that another will commit an offense on the person of her husband is insufficient. 10 Neb. 586.

Sec. 270. Judgment for costs, in a complaint by A against B, against husband of A is void. Judgment can only be entered under this section for "costs of prosecution." 10 Neb. 587.

SEC. 271. [**Recognizance of witnesses.**]—In case the defendant is recognized or committed as aforesaid, the magistrate shall require the material witnesses in the case to enter into recognizance to appear in court, as described in sections three hundred and three, three hundred and four, [and] three hundred and five. [Amended 1875, 17.]

SEC. 272. [**Recognizance returned.**]—All recognizances authorized to be taken as aforesaid, either in term time or vacation of that court to which the same may be returnable, shall be delivered or transmitted by the magistrate taking the same to the clerk of such court, without unnecessary delay, and before the commencement of the term of the court next thereafter to be holden, if such recognizance be taken in vacation; but if the same be taken in term time, then it shall be returned forthwith.

SEC. 273. [**Magistrate may require security without process.**]—Every person who, in the presence of any magistrate specified in the first section, shall make an affray or threaten to kill or beat another, or to commit any offense against the person or property of another, and every person who, in the presence of such officer, shall contend with hot and angry words, to the disturbance of the peace, may be ordered without process, or any other proof, to give such security as above specified in this title, and, in case of failure, or refusal, he may be committed in like manner as above specified.

SEC. 274. [**Examination.**]—The district court to which any transcript or recognizance to keep the peace, as aforesaid, shall be returned, shall, upon the appearance of the parties complaining and complained of, examine the witnesses produced upon oath, and may either discharge the accused from his recognizance or commitment, or may order him to enter into such other and further security as may be just, thereafter to keep the peace and be of good behavior for such term of time as the court may order.

SEC. 275. [**Commitment.**]—For want of such security the court shall commit the person accused to the jail of the county, there to remain until such order be complied with, or he be otherwise discharged by due course of law; but in no case shall a person so failing to give security be confined for a period of time exceeding one year.

SEC. 276. [**Costs.**]—Whether such person be held to bail or be committed for want thereof, the court shall, in either case, render judgment against him for the costs of the prosecution and award execution therefor.

SEC. 277. [**Failure to prosecute.**]—When any person shall have been recognized to the court to keep the peace as aforesaid, and the complainant shall fail to prosecute his complaint, the party recognized shall be discharged unless good cause to the contrary be shown.

SEC. 278. [**Costs.**]—If the district court shall discharge the person accused on examination of the complaint, or because the complainant has failed to appear, said court may in its discretion, render judgment against the person complaining for the costs of prosecution, and award execution therefor.

SEC. 279. [**Preventing prize fight.**]—If, at any time, the sheriff of any county, constable or marshal, or other police officer of any city or incorporated village, shall have reason to believe that any person in his bailiwick is about to engage as principal in any fight or contention described in section seven of this code, or is in preparation or training to engage as principal in any fight or contention, he shall forthwith arrest such person and conduct him before any judge of the district court, or a magistrate in his county, and upon the proper affidavit being filed, prosecute the complaint; and thereupon the judge or magistrate shall inquire into the truth of said charge, and if he shall find it true, he shall require the accused to enter into a recognizance, with sufficient sureties, residents of this state, to be approved by such judge or magistrate, in a sum not less than five hundred nor more than ten thousand dollars, conditioned that the accused will not engage in any such fight or contention within the period of one year from and after the date of such arrest, and in default of such recognizance, such judge, Justice shall commit offender until compliance, but after one month County Judge may discharge him on his own recognizance; which shall be recorded by Clerk of District Court, for suit, if forfeited; and Sheriff may suppress such fight if in progress, by the *posse*, and arrest the parties.

SEC. 282. All costs to be first paid by the county, and afterwards collected off the offenders.

SEC. 283. Arrests may be made by all peace officers, on view of actual commission of an offense; and private persons may arrest and hold for warrant, where felony has been actually committed, on reasonable ground of belief; and in misdemeanors, security for costs may be required of complainant, who will be adjudged to pay if complaint is found to be without probable cause.

SEC. 289. Warrant, by endorsement thereon, may authorize any named person to make the arrest anywhere in the State; and all executive peace officers are required to assist.

SEC. 291. Absconding offenders may be extradited by magistrates of the county where found.

SEC. 293. Doors and windows may be broken, in executing warrant of arrest; but the building must be described, if the process is but a search warrant.

SEC. 295. When any offense is committed in view of any Magistrate he may, by verbal direction to any Sheriff or Constable, or Marshal or other proper officer, or, if no such officer be present, then to any citizen, cause the offender to be arrested and kept in custody for the space of one hour, unless he shall sooner be taken from such custody, by virtue of a warrant issued on complaint under oath; but a person so arrested shall not be confined in jail nor put upon trial until arrested by virtue of such a warrant.

SEC. 296. [**Rewards by county.**]—The county commissioners of the several counties in this state are hereby authorized, when they deem the same expedient, to offer such rewards as in their judgment the nature of the case may require, for the detection or apprehension of any person charged with or convicted of a felony, and pay the same on the conviction of such person, together with all necessary expenses not otherwise provided for by law, incurred in making such detection or apprehension, out of the county treasury.

SEC. 296 *a.* [**Rewards for capture of horse thieves.**]—SEC. 1. That the sheriffs of the several counties within this state are hereby authorized to offer and pay a reward not exceeding the sum of fifty dollars for the capture and conviction of any person charged with stealing a horse or horses within their respective counties, and the county commissioners of such counties shall audit the accounts of such sheriffs for money paid out as such rewards, together with all necessary expenses incurred in the apprehension and detention of any such horse thief, and pay the same out of the treasury of their county. [1879, 181.]

CHAPTER XXVIII.—ADJOURNMENT AND EXAMINATION BEFORE A MAGISTRATE.

SEC. 297. [**Commitment pending adjournment.**]—If it shall become necessary for any just cause to adjourn the examination of any person brought before the magistrate as set forth in the preceding chapter, it shall be lawful for such magistrate to adjourn such examination and commit such person, from time to time, for safe keeping, to the jail of the county, until the cause of delay be removed, and no longer; *Provided,* The whole time of such confinement in the jail shall not exceed four days; *Provided, also,* That the officer having in custody any such person, may, by the written order of the magistrate, detain such person in custody in some secure and convenient place other than the jail, to be designated by said magistrate in his order, not exceeding four days. And it shall be the duty of the officer in whose custody any person shall be detained as above, to provide for the sustenance of such prisoner while in custody.

SEC. 298. [**Same—Recognizance.**]—When it shall become necessary to adjourn any trial according to the provisions of the preceding section, the person accused may enter into a recognizance before the magistrate, with good and sufficient security to be approved by the magistrate, in such amount as he shall deem reasonable, conditioned for the appearance of such person before said magistrate, at a place and day and hour in said recognizance specified; *Provided,* That such adjournment shall not be for a longer time than twenty days without the consent of the accused; *And provided,* That no person shall be let to bail who is charged with an offense not bailable under the constitution of this state.

SEC. 299. [**Recognizance forfeited.**]—If any person recognized, agreeably to the last preceding section, shall fail to appear at the time appointed, or shall otherwise fail to comply with the conditions of the recognizance, the magistrate shall declare the same forfeited, and transmit a transcript of his proceeding in the case, together with the recognizance, to the clerk of the proper court; and such proceedings shall be had thereon by said court as shall be deemed expedient, and as if the recognizance had been taken in said court.

SEC. 300. [**Charge exceeding jurisdiction.**]—When the complaint is for a felony, or for an offense for which the fine can exceed one hundred dollars, or the imprisonment can exceed three months, upon the accused being brought before the magistrate he shall proceed as soon as may be, in presence of the accused, to inquire into the complaint.

SEC. 301. **[Witnesses—Separate examination.]**—The magistrate, if requested, or if he sees good cause therefor, shall order that the witnesses on both sides shall be examined each one separate from all the others, and that the witnesses for may be kept separate from the witnesses against the accused during the examination.

SEC. 302. **[Accused discharged.]**—If, upon the whole examination, it appears that there has been no offense committed, or that there is not probable cause for holding the prisoner to answer the offense, he shall be discharged.

SEC. 303. **[Recognizance of witness.]**—If it shall appear that an offense has been committed, and there is probable cause to believe the prisoner guilty, the magistrate shall bind by recognizance such witnesses against the prisoner as he shall deem necessary, to appear and testify before the court having cognizance of the offense, on the first day of the next term thereof, and not to depart from such court without leave. If the court is in session, they shall be recognized to appear forthwith, but no recognizance requiring such witnesses to appear at the next term shall be invalid from the fact that the court is in session.

SEC. 304. **[Same.]**—When the magistrate is satisfied that there is reason to believe that any such witness will not perform the condition of his own recognizance, he may, when the offense charged is a felony, order him to recognize with sufficient securities. Any person may recognize for a married woman or a minor to appear as a witness, or the magistrate may take the recognizance of either in a sum not exceeding one hundred dollars, which shall be valid notwithstanding the disability of coverture or minority.

SEC. 305. **[Same—Refusal.]**—If any witness so required to enter into a recognizance, refuse to comply with such order, the magistrate shall commit him or her to jail until he or she comply with such order, or be otherwise discharged according to law.

SEC. 306. **[Docket—Transcript.]**—It shall be the duty of every magistrate in criminal proceedings, to keep a docket thereof as in civil cases. All recognizances taken under this title, together with a transcript of the proceedings, where the defendant is held to answer, shall be certified and returned forthwith to the clerk of the court at which the prisoner is to appear. The transcript shall contain an accurate bill of all the costs that have accrued, and the items composing the same.

SEC. 307. **[Recognizance of defendant.]**—If the offense for which the prisoner is held to answer be bailable, and the prisoner offer sufficient bail, a recognizance shall be taken for his appearance to answer the charge before the court in which the same is cognizable on the first day of the next term thereof, and not to depart such court without leave, and thereupon he shall be discharged.

SEC. 308. **[Same—Court in session.]**—If the court to which the accused is recognized to appear is in session, the condition of the recognizance shall be that he shall appear at such court forthwith, and not depart therefrom without leave; but no recognizance requiring the accused to appear at the next term, shall be rendered invalid by the fact that the court is in session.

SEC. 309. **[Crime higher than charged.]**—If on the examination it shall appear to the magistrate that the accused has committed an offense of a higher grade than that charged, he may be held to answer therefor.

SEC. 310. **[Commitment—Want of bail.]**—If the offense be not bailable, or sufficient bail be not offered, the prisoner shall be committed to the jail of the county in which the same is to be tried, there to remain until he be discharged by due course of law.

SEC. 311. **[Mittimus.]**—It shall be the duty of the magistrate who shall commit any offender to jail, either because such offender is unable to procure bail for his appearance at court, or because the offense is not by law bailable.

SEC. 301. Not applicable to trials in district court. 15 Neb. 486.
SEC. 302. 10 Neb. 80. SEC. 307. 17 Neb. 76.

to write on the warrant of commitment the names and residences of the principal witnesses by whom the crime was proved before said magistrate.

Sec. 312. [**Copy mittimus—List of witnesses.**]—Whenever any prisoner in the custody of the sheriff or jailer of any county, on any warrant of commitment as aforesaid, shall demand of said sheriff or jailer a copy of said warrant of commitment, said sheriff or jailer shall endorse on said copy the names of the witnesses written thereon as aforesaid; and any magistrate who shall neglect to write the name or names of the witnesses aforesaid on the warrant of commitment, or any sheriff or jailer who shall neglect to indorse the name of said witness or witnesses on a copy of said commitment, each magistrate, sheriff, or jailer offending in the premises shall be fined in the sum of twenty dollars, to be recovered by action of debt, in the name and for the use of any person who shall sue for the same in any court of record.

Sec. 313. [**Pleading guilty of misdemeanor before county judge.**] —When the complaint is for a misdemeanor only, of any grade of punishment whatever, if the cause is pending before the probate judge of the county, before whom the defendant enters a plea of guilty to the complaint, it shall be lawful for such judge, in his discretion, to render judgment of fine or imprisonment, or both, according to the law of the case, and pass sentence accordingly, and enforce the same according to law.

CHAPTER XXIX.—Trial of Minor Offenses before Magistrates.

Sec. 314. [**Jurisdiction.**]—Magistrates shall have jurisdiction concurrent with the district court and co-extensive with their respective counties, in all cases of misdemeanor, in which the fine cannot exceed one hundred dollars and the imprisonment cannot exceed three months, except as otherwise provided by law.

Sec. 315. [**Plea.**]—In all cases where the magistrate shall have jurisdiction to try and sentence or finally discharge, as described in the preceding section, the charge made against the defendant shall be distinctly read to him, and he shall be required to plead thereto, which plea the magistrate shall enter upon his docket. If the defendant refuse to plead, the magistrate shall enter the fact, with a plea of "not guilty" in his behalf.

Sec. 316. [**Jury—Waiver.**]—After the plea of the defendant has been entered, if he plead not guilty, the defendant, or complainant, or the district attorney, if he be present, may demand a jury; but if no jury be demanded, the cause may be tried by the magistrate.

Sec. 317. [**Jury, how drawn.**]—If a jury be demanded, the magistrate shall make a list in writing of the names of eighteen inhabitants of the county, qualified to serve as jurors in courts of record, from which list the defendant and the district attorney, or complainant, shall strike out names alternately until each shall have struck six names, the defendant striking out the first name.

Sec. 318. [**Same—By magistrate.**]—In case the defendant or the district attorney or complainant shall neglect to strike out such names, the magistrate shall proceed to strike out the names for either, or both the parties so neglecting, and the magistrate shall issue a venire directed to the sheriff, or any constable of the county, requiring him to summons the six persons whose names shall remain upon the list, to appear before such magistrate at a time and place to be named therein, to serve as jurors for the trial of such cause.

Sec. 319. [**Jury less than six.**]—If the defendant consent, the cause may be tried before a jury of any number of men more than two and less than six, to be selected from a list of double the number so agreed upon, of qualified inhabitants of the county, as provided in the last preceding section, each party striking out names from the list alternately, until the number so agreed upon shall remain, the defendant striking out the first name.

Sec. 320. [**Service of venire—Talesmen—New jury.**]—The venire

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Sec. 313. Jurisdiction of county judge. 19 Neb. 274.

[The following sections are a continuation of page 930 *post.*]
shall be served personally upon the jurors; and talesmen may be called when necessary; and if jury are discharged on disagreement, a new venire shall issue, unless defendant waives a jury.

SEC. 321. Challenges, for cause, are allowed to either party.

SEC. 322. Costs are to be adjudged against the accused, on conviction, and he will be committed until paid. But if the action fails, and is adjudged to have been without probable cause and malicious, judgment shall go against complainant, with the same sentence, unless he gives security to pay in thirty days.

SEC. 324. Appeal lies immediately after judgment, on bond for one hundred dollars, conditioned to appear at next term of District Court, to which day the magistrate shall return transcript and papers, and recognize complainant and witness, to appear on said first day, or on their refusal of such undertaking imprison them if necessary.

SEC. 325. [**Same—Proceedings in district court.**]—The district court shall hear and determine any cause under this act, brought by appeal from a magistrate, upon the original complaint, unless such complaint shall be found insufficient or defective, in which event the court, at any stage of the proceedings, shall order a new complaint to be filed therein, and the case shall proceed thereon the same in all respects as if the original complaint had not been set aside.

SEC. 326. [**Conviction—Judgment.**]—If, upon a trial in the district court the defendant shall be convicted, the court shall assess the punishment and judgment shall be rendered against him accordingly, and for the costs before the magistrate, also for the costs in such court, and that he be committed to the county jail until the judgment be complied with.

SEC. 327. [**Trial changed to examination.**]—If in the progress of any trial before a magistrate, under the provisions of this chapter, it shall appear that the defendant ought to be put upon his trial for an offense not cognizable before a magistrate, the magistrate shall immediately stop all further proceedings before him, and proceed as in other criminal cases, exclusively cognizable before the district court.

SEC. 328. [**Conviction certified to county clerk.**]—Whenever conviction shall be had before a magistrate under this chapter, he shall make a certificate of such conviction, under his hand, in which it shall be sufficient briefly to state the offense charged, and the conviction and judgment thereon; and if any fine was assessed or collected, the amount so assessed and collected, with the date at which the same was so done. Such certificate shall be filed by the magistrate within twenty days after such conviction, in the office of the county clerk of the county in which such conviction was had; and the original, or a duly certified copy thereof, shall be evidence in all the courts of this state, of the facts therein contained.

SEC. 329. [**District attorney—Prosecutor.**]—The district attorney, if present in any county in his district, in which any trial for misdemeanor is about to take place, or is in progress under this chapter, shall, if not actually engaged in any other business connected with his said office, appear and prosecute in such trial, if requested by the magistrate or the complainant.

CHAPTER XXX.—FUGITIVES TO AND FROM OTHER STATES AND COUNTRIES.

SEC. 330. [**Procedure—Resident fugitives.**]—When an affidavit shall be filed before any judge of a district court, or any judge of probate or police court, or any justice of the peace, within this state, setting forth that any person charged with the commission of any criminal offense against the laws of any other state or any of the territories of the United States, and which, if the act had been committed in this state would, by the laws thereof, have been a crime, is at the time of filing such affidavit within the county where the same may be filed, it shall be lawful, and it is hereby made the duty of such judge or justice of the peace to issue his warrant, directed to the sheriff or any constable of the county, commanding him forthwith to arrest and bring before the officer issuing such writ the person so charged.

SEC. 331. [**Same—Examination.**]—When the person arrested, as provided in the last preceding section shall be brought before the officer issuing such warrant, it shall be lawful, and it is hereby made the duty of such officer to hear and examine such charge, and upon proof by him adjudged to be sufficient, to commit such person to the jail of the county in which such examination shall take place, or cause such person to be delivered to some suitable person, to be removed to the proper place of prosecution.

SEC. 332. [**Same—Notice.**]—Whenever any person is committed to jail by any judge or justice of the peace, by either of the provisions of the preceding section, it shall be the duty of such judge or justice of the peace forthwith to give notice, by letter or otherwise, to the sheriff of the county in which such offense shall

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SEC. 325. Original lost new complaint may be substituted. 6 Neb. 171. See also 16 Neb. 659. 17 Id. 146. 19 Id. 273.

have been committed, or to the person injured by such offense, or to the proper authorized agent or officer; and no person so committed shall be delayed longer in jail than necessary to allow a reasonable time to the person so notified, after he shall have received such notice, to apply for and obtain the proper requisition for the person so committed.

SEC. 333. [**Demand by executive of another state.**]—Whenever a demand is made upon the governor of this state by the executive of any other state or territory, in any case authorized by the constitution and laws of the United States, for the delivery of any person charged in such state or territory with any crime, if such person is not held in custody or under bail to answer for any offense against the laws of the United States or of this state, he shall issue his warrant under the seal of the state, authorizing the agent who makes the demand, either forthwith or at such time as may be designated in the warrant, to take and transport such person to the line of this state, at the expense of such agent, and may also by such warrant require all peace officers to afford needful assistance in the execution thereof.

SEC. 334. [**Agents to foreign governments.**]—The governor of this state may, in any case authorized by the constitution and laws of the United States, appoint agents to demand of the executive authority of any foreign government, any fugitive from justice, charged with treason or felony, and the accounts of the agents appointed must be audited by the auditor, and paid out of the state funds.

CHAPTER XXXI.—SEARCH WARRANTS.

SEC. 335. [**Warrants issued.**]—If shall be lawful for any magistrate to issue warrants to search any house or place: *First.* For property stolen, embezzled or obtained under false pretenses or tokens. *Second.* For forged or counterfeit coins, stamps, labels, trade marks, bank bills or other instruments in writing, or for counterfeiting instruments. *Third.* For books, pamphlets, ballads or printed papers containing obscene language, prints, pictures or descriptions, manifestly tending to corrupt the morals of youth, and intended to be sold or circulated. *Fourth.* For any gaming table, establishment, device or apparatus kept or exhibited for the purpose of unlawfully gaming, and for any money or personal property won by unlawful gaming. *Fifth.* For the body of any deceased person alleged to have been unlawfully removed from its sepulchre or grave.

SEC. 336. [**Complaint.**]—No warrant for search, as described in the preceding section, shall be issued until a complaint in writing, upon oath, has been filed with the magistrate; such complaint shall be signed by the complainant, and particularly describe the house or place to be searched, the person to be seized and the things to be searched for, and allege substantially the offense in relation thereto, and that the complainant verily believes that such things are there concealed.

SEC. 337. [**Contents.**]—The warrant for search shall be directed to the proper officer, and shall recite, by reference to the complaint annexed, or otherwise, all the material facts alleged in the complaint, and particularly describe the thing for which the search is to be made, the house or place to be searched, and the person to be seized. It shall command the officer to search such house or place in the day time, for the property, or other things, and if found, to seize and bring the same, together with the person to be seized, before the magistrate, or some other magistrate of the county, having cognizance of the same.

SEC. 338. [**At night.**]—If the magistrate is satisfied that there is urgent necessity therefor, the warrant may order the searching of such house or place in the night time.

SEC. 339. [**Disposition of property seized.**]—When the warrant is executed by the seizure of the property or things described therein, the same shall be safely kept by the magistrate, to be used as evidence.

SEC. 340. [**Same—After examination.**]—If upon the examination the magistrate is satisfied the offense has been committed, he may retain possession or surrender property to the Sheriff for safe keeping.

SEC. 341. Restored to owner after a conviction; but to the former possessor, in case of a discharge.

SEC. 343. Counterfeit coin or implements may be melted and broken, and sold for county's benefit.

SEC. 344. Unclaimed stolen property for the space of three months may be sold at auction, on newspaper notice for county's school fund; and if held one year, unclaimed, and no conviction has been had, it shall be sold as above.

SEC. 346. Persons in jail may be admitted to bail by any Judge, acting in his territorial jurisdiction, on bond given with sureties and amount approved by said Judge; and for this purpose the Judge may order the prisoner produced by writing under seal; and the amount is to be governed by any previous order of District Court in the case; the recognizance to be returned to the proper Court in all cases, wherein taken.

SURRENDER BY SURETIES.

SEC. 350. Sureties may produce their principal in open Court, and be discharged; and they will be committed unless new bond is given; or surrender may be made to Sheriff, in which case the latter will give to sureties a written acknowledgment of such surrender, which is their discharge.

HABEAS CORPUS.

SEC. 353. When allowed, any person, not convict, unlawfully held, may apply by sworn petition, to any District or Probate Judge, and have the writ issued.

SEC. 354. Return shall be made by the officer, by conveying applicant before the Judge, or some other of same Court, if he be absent or disqualified, on the return day, together with the cause of detention; and witnesses for the hearing may be compelled to attend by attachment, after subpœna, and give evidence; and on the trial, inquiry may be had "touching any offence mentioned in the warrant of commitment, whether technically set out or not," and prisoner either discharged, recommitted, or admitted to bail.

SEC. 359. Refusal to obey the writ, or making a false return, or refusing to give copy of warrant or commitment, forfeits to aggrieved party two hundred dollars for first offense, and four hundred dollars for the second, and his tenure of office; and a clerk refusing to issue writ forfeits $500.

SEC. 361. Re-arrest for the same offense after a discharge on *habeas corpus* forbidden, and any one who knowing causes it forfeits $500.

SEC. 376. The Probate Judges of the several counties of this State shall be allowed the sum of two dollars for every allowance of the writ of habeas corpus, and the hearing and determining of the case upon the return of such writ, which sum, together with the fees of the Clerk, Sheriff, and witnesses in the case, shall be taxed by such Probate Judge on his return of his proceedings on such writ, and the same, when the person brought before such Judge on such writ was in custody by virtue of the proceedings in any case in which such person is charged or attempted to be charged with the commission of any criminal offense, and when such person shall either be held to bail, or shall be remanded to custody by such Judge, shall be taxed and collected as part of the original cost in such case; but when such person shall be wholly discharged by such Judge, such costs shall be taxed to the State, and paid out of the County Treasury of the proper county, upon the order of the County Commissioners; *Provided*, That no person or officer shall have the right to demand the payment in advance of any fees which such person or officer may be entitled to by virtue of such proceedings on habeas corpus, when such writ shall have been issued or demanded for the discharge from custody of any person confined under color of proceedings in any criminal case.

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any colorable pretense or variation in the warrant or commitment notwithstanding.

Sec. 362. [**Prisoners removed from custody of one officer.**]—If any person of this state shall be committed to prison, or be in custody of any officer for any criminal matter, such prisoner shall not be removed therefrom into the custody of any other officer, unless by legal process, or when the prisoner shall be delivered to some inferior officer to carry to jail, or shall, by order of the proper court, be removed from one place to another within the state, for trial, or in case of fire, infection, or other necessity; and if any person, after such commitment, shall make out or sign, or countersign, any warrant for such removal, contrary to this chapter, he or she shall, for every such offense, forfeit to the party aggrieved five hundred dollars.

Sec. 363. [**Accessories to capital felonies.**]—When any person shall appear to be committed by any judge or magistrate, and charged as accessory before the fact to any felony, the punishment whereof is capital, which felony shall be plainly and specially charged in the warrant of commitment, such person shall not be removed or bailed by virtue of this chapter, or in any other manner than as if this chapter had not been enacted.

Sec. 364. [**Expatriation.**]—No citizen of this state, being an inhabitant or resident of the same, shall be sent a prisoner to any place whatever out of the state, for any crime or offense committed within this state, except in cases specially authorized by law, and every such imprisonment is hereby declared to be illegal. And if any such citizen shall be so imprisoned, he may for every such imprisonment maintain an action of false imprisonment in any court having cognizance thereof, against the person or persons by whom he shall be so imprisoned or transported contrary to law, and against any person who shall contrive, write, seal, sign, or countersign any writing for such imprisonment or transportation, or shall be aiding and assisting in the same, or any of them, and shall recover triple costs besides damages, which damages, so to be given, shall not be less than five hundred dollars; and every person knowingly concerned in any manner as aforesaid, in such illegal imprisonment or transportation, contrary to this chapter, and being thereof lawfully convicted, shall be disabled from thenceforth to bear any office of trust or profit within this state; *Provided*, That if any citizen of this state, or any person or persons at any time resident in the same, shall have committed, or shall be charged with having committed, any treason, felony, or misdemeanor, in any other part of the United States or territories where he or she ought to be tried for such offense, he, she, or they may be sent to the state or territory having jurisdiction of the offense.

Sec. 365. [**Penalties recovered by civil action.**]—The penalties in this chapter made recoverable, shall be recovered by the party aggrieved, his or her executors or administrators, by civil action in any court having cognizance of the same; *Provided*, That no person shall be sued or molested for any offense against this chapter, unless within two years after the time when such offense shall have been committed; but if the party aggrieved shall then be in prison, then within two years after the decease of the person imprisoned, or his or her delivery out of prison. And in every such action it shall be lawful for the defendant to plead the general issue, and give the special matter in evidence.

Sec. 366. [**Informalities no ground for discharge.**]—If any person shall be committed to prison, or be in custody of any officer for any criminal matter, by virtue of any warrant or commitment of any magistrate of this state having jurisdiction of such criminal matter, such person shall not be discharged from such imprisonment or custody by reason of any informality or defect of such warrant or commitment; *Provided*, Such warrant or commitment shall show substantially a criminal matter for which such magistrate had jurisdiction so to arrest or commit.

Sec. 367. [**Form of writ—Prisoner not in custody of officer.**]—In case of confinement, imprisonment, or detention by any person not a sheriff, deputy sheriff, coroner, jailer, constable, or marshal of this state, nor a marshal or other like officer of the courts of the United States, the writ of habeas corpus shall be in the form following:

"THE STATE OF NEBRASKA, } ss.
———COUNTY. }

The State of Nebraska to the Sheriff of said County, greeting:

We command you, that the body of———, of———, by———of———imprisoned and restrained of his liberty, as it is said, you take and have before———, a judge of our———court———. or, in case of his absence or disability, before some other judge of the same court at———, forthwith to do and receive what our said judge shall then and there consider———concerning him in his behalf, and summon the said———then and there to appear before our said judge to show the cause of the taking and detaining the said———; and have you there this writ, with your doings thereon.

Witness———, at———, this———day of———, in the year———.

[SEAL.] ———

SEC. 368. [**Writ—Service and return.**]—Such writ may be served in any county by any sheriff of the same or of any other county. When such writ shall be issued by a court in session, if such court shall have adjourned when the same is returned, it shall be returned before any judge of the same court, and if such writ is returned before one judge at a time when the court is in session, he may adjourn the case into the court, there to be heard and determined.

SEC. 369. [**Person having prisoner, how designated.**]—The person having the custody of the prisoner, may, in all writs of habeas corpus issued under this chapter, be designated by his name of office, if he have any, or by his own name; or, if both such names are unknown or uncertain, he may be described by an assumed appellation, and any person who is served with the writ, shall be deemed the person intended thereby.

SEC. 370. [**Prisoner, how designated.**]—The person to be produced shall be designated by his name, if known, and if that is unknown or uncertain, he may be described in any other way so as to make known who is intended.

SEC. 371. [**Return of writ—Contents.**]—In cases other than those provided for by the first section of this chapter, the person who makes the return shall state therein, and in the cases provided for in this chapter, the person in whose custody the prisoner shall be found, shall state in writing to the court or judge before whom the writ is returned, plainly and unequivocally—*First.* Whether he has or has not the party in his custody or power, or under restraint. *Second.* If he has the party in his custody or power, or under restraint, he shall set forth at large the authority and the true and whole cause of such imprisonment and restraint, with a copy of the writ, warrant, or other process, if any, upon which the party is detained. *Third.* If he has had the party in his custody or power, or under restraint, and has transferred such custody or restraint to another, he shall state particularly to whom, at what time, for what cause and by what authority such transfer was made.

SEC. 372. [**Return, signed and sworn to.**]—The return or statement shall be signed by the person making it, and it shall be sworn to by him, unless he is a public officer, and shall make the return in his official capacity.

SEC. 373. [**Return as evidence—Costs.**]—Upon the return of any writ of habeas corpus, issued as aforesaid, if it shall appear that the person detained or imprisoned is in custody, under any warrant or commitment in pursuance of the law, the return shall be considered as *prima facie* evidence of the cause of detention; but if the person so imprisoned or detained is restrained of liberty by any alleged private authority, the return of said writ shall be considered only as a plea of the facts therein set forth, and the party claiming the custody shall be held to make proof of such facts; and upon the final disposition of any case arising upon a writ of habeas corpus, the court or judge determining the same, shall make such order as to costs as the case may require.

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hereafter incurred in the prosecution of any person accused of the commission of an offense within the county so attached, and for costs in any other judicial proceeding originating therein, to the same extent, and on the same conditions, as if such prosecution were carried on or such proceedings were had within such county so attached; *Provided*, That the fees of jurors shall be paid by the county from which they may be drawn.

Sec. 382. [**Payment.**]—The costs to be paid under this chapter, by any county, shall be such as may be provided by law at the time when the services may be rendered or the expenses incurred; and shall be allowed by the commissioners of the proper county, upon the certificate of the clerk of the district court that such costs have been taxed by him or by the court, and are chargeable upon such county.

CHAPTER XXXVI.—Filing and Record of Recognizance.

Sec. 383. [**Duties of clerk.**]—Whenever a transcript or recognizance shall be returned to the clerk, it shall be his duty to enter the cause upon the appearance docket of the court, together with the date of the filing of the transcript and recognizance, the date and amount of the recognizance, the names of the sureties and the costs; whereupon the same shall be considered as of record in such court and proceeded on by process issuing out of said court, in the same manner as if such recognizance had been entered into before such court; and when any court, having cognizance of a crime, shall take a recognizance, it shall be a sufficient record thereof on the journal of such court, to enter upon the journal the title of the cause, the crime charged, the name of the party and his sureties thereto, the amount of such recognizance, and the time therein required for the appearance of the accused, and the same shall be considered as of record in such court; but in making up the complete record in any case, when one is required to be made, all recognizance, whether returned to or taken in such court, shall be recorded in full, if required by the prosecuting attorney or the accused.

CHAPTER XXXVII.—Proceedings Upon Forfeiture of Recognzance.

Sec. 384. [**Forfeiture.**]—When any person under recognizance in any criminal prosecution, either to appear and answer, or testify in any court, shall fail to perform the conditions of such recognizance, his default shall be recorded, and the recognizance forfeited in open court.

Sec. 385. [**Prosecution.**]—Whenever such recognizance shall have been forfeited as aforesaid, it shall be the duty of the prosecuting attorney of the county in which the recognizance was taken, to prosecute the same by civil action for the penalty thereof; and such action shall be governed by the provisions of the Code of Civil Procedure, so far as the same may be applicable.

Sec. 386. [**Reduction of penalty.**]—The court in which the action for the penalty of any forfeited recognizance is brought, may remit or reduce any part or the whole of such penalty, and may render judgment thereon according to the circumstances of the case and the situation of the party, and upon such terms and conditions as to such court shall seem just and reasonable.

Sec. 387. [**Reduction of judgment.**]—Whenever any judgment shall have been rendered against the defendants for the whole or any part of the penalty of a forfeited recognizance, as aforesaid, the court rendering said judgment shall have power to remit or reduce the amount thereof, when it shall be made to appear that after the rendition thereof the accused had been arrested and surrendered to the proper court, to be tried on such charge.

Sec. 388. [**Defects not to debar action, etc.**]—No action brought on any recognizance, shall be barred or defeated, nor shall judgment thereon be

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Sec. 383. Becomes an obligation of record when returned by justice of peace to clerk of district court and by him recorded. 18 Neb 379.

Sec 384. Recognizance need not be signed; denomination of debt, etc., must be given. 10 Neb. 327. Arrest of principal after indictment, releases sureties on recognizance given before. 12 Neb. 312. Sureties jointly sued, judgment against one only erroneous. Id.

reversed by reason of any neglect or omission to note or record the default, nor by reason of any defect in the form of the recognizance if it sufficiently appear from the tenor thereof at what court the party or witness was bound to appear and that the court or officer before whom it was taken was authorized by law to require and take such recognizance.

CHAPTER XXXVIII.—Discharge from Custody or from Recognizance.

Sec. 389. [**When not indicted.**]—Any person held in jail charged with an indictable offense, shall be discharged if he be not indicted at the term of the court at which he is held to answer, unless such person shall have been committed to jail on such charge after the rising and final report of the regular grand jury for said term, in which case the court, in its discretion may discharge such person, or order a new grand jury, as provided in section four hundred and five, or require such person to enter into recognizance with sufficient security for his appearance before said court to answer such charge at the next term thereof; *Provided*, That such person so held in jail without indictment shall not be discharged, if it appears to the satisfaction of the court that the witnesses on the part of the state have been enticed or kept away, or are detained and prevented from attending court by sickness or some inevitable accident. [11 Neb. 221.]

Sec. 390. [**Prisoner not brought to trial.**]—If any person indicted for any offense and committed to prison, shall not be brought to trial before the end of the second term of the court having jurisdiction of the offense, which shall be held after such indictment found, he shall be entitled to be discharged, so far as relates to the offense for which he was committed, unless the delay shall happen on application of the prisoner.

Sec. 391. [**Same.**]—If any person indicted for any offense, who has given bail for his appearance, shall not be brought to trial before the end of the third term of the court in which the cause is pending, held after such indictment is found, he shall be entitled to be discharged, so far as relates to such offense, unless the delay happen to be on his application, or be occasioned by the want of time to try such cause, at such third term.

Sec. 392. [**Exception.**]—If, when application is made for the discharge of a defendant under either of the last two sections, the court shall be satisfied there is material evidence on the part of the state, which can not then be had, that reasonable exertions have been made to procure the same, and that there is just ground to believe that such evidence can be had at the succeeding term, the cause may be continued, and the prisoner remanded or admitted to bail as the case may require.

CHAPTER XXXIX.—Grand Jury.

Sec. 393. [**Lists of cases for grand jury.**]—Before the first day of each term of a court at which a grand jury shall be summoned to appear, the clerk of said court shall make out two lists, on which he shall enter the names of all persons who appear, by the returns of the magistrates, to have been either committed or bailed for an offense during the vacation of such court, the name of the magistrate who committed or bailed, and distinguishing whether such person was committed or bailed; one of these lists shall be delivered by the judge to the foreman of the grand jury, and the other, together with all the transcripts and other documents returned by the magistrates, shall be delivered to the prosecuting attorney.

Sec. 394. [**Foreman.**]—When the grand jury shall be impaneled in the manner provided by law, the court shall appoint one of the number foreman.

Sec. 395. [**Oath of foreman.**]—When the foreman shall be appointed, an oath or affirmation shall be administered to him in the following words;

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Sec. 406. [**Secresy.**]—No grand juror or officer of the court shall disclose that an indictment has been found against any person not in custody or under bail, except by the issuing of process, until the indictment is filed and the case docketed.

Sec. 407. [**Same.**]—No grand juror shall be allowed to state or testify in any court in what manner he or other members of the grand jury voted on any question before them, or what opinion was expressed by any juror in relation to such question.

Sec. 408. [**When bill to be preferred.**]—At least twelve of the grand jurors must concur in the finding of an indictment; when so found, the foreman shall indorse on such indictment the words "A true bill," and subscribe his name thereto as foreman.

Sec. 409. [**Visit jail.**]—The grand jury shall, once at each term of the court at which they may be in attendance, visit the county jail, examine and report its condition as required by law.

Sec. 410. [**Disposition of indictments.**]—Indictments found by a grand jury, shall be presented by their foreman to the court, and shall be filed with the clerk, who shall endorse thereon the day of their filing, and shall enter each case upon the appearance docket, and also upon the trial docket of the term, as soon as the parties indicted have been arrested.

Sec. 411. [**Assignment of causes.**]—The court shall assign said indictments for trial at as early a time in such term as is practicable, and the recognizances of parties and witnesses shall, in all such causes, be taken for their appearance at the time so assigned; and in case of the continuance of any cause to the next term of the court, such recognizances shall be for the appearance of the parties and witnesses on such day thereof as the court may direct; and at the end of the term the clerk shall deliver the indictments undisposed of to the prosecuting attorney for safe keeping.

CHAPTER XL.—Of Indictments.

Sec. 412. [**Defects not fatal.**]—No indictment shall be deemed invalid nor shall the trial, judgment, or other proceedings be stayed, arrested, or in any manner affected: *First.* By the omission of the words, "with force and arms," or any words of similar import; or, *Second.* By omitting to charge any offense to have been contrary to a statute or statutes; or, *Third.* For the omission of the words, "as appears by the record," nor for omitting to state the time at which the offense was committed, in any case where time is not of the essence of the offense; nor for stating the time imperfectly; nor for want of a statement of the value or price of any matter or thing, or the amount of damages, or injury, in any case where the value, or price, or the amount of damages, or injury, is not of the essence of the offense; nor for the want of an allegation of the time or place of any material fact, when the time and place have once been stated in the indictment; nor that dates and numbers are represented by figures; nor for an omission to allege that the grand jurors were impaneled, sworn, or charged; nor for any surplusage or repugnant allegation when there is sufficient matter alleged to indicate the crime or person charged; nor for want of the averment of any matter not necessary to be proved; nor for any other defect or imperfection which does not tend to the prejudice of the substantial rights of the defendant upon the merits.

Sec. 413. [**Variances not fatal.**]—Whenever on trial of any indictment for any offense, there shall appear to be any variance between the statement in

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Sec. 412. Omissions held not fatal. 1 Neb. 369. 4 Id. 285. 5 Id. 380. 12 Id. 62. 17 Id. 226. Describing crime. 2 Neb. 162. Time and place. Id. 9 Id. 64. Mere surplusage does not vitiate. 1 Neb. 371. Duplicity. 15 Neb. 139. Election between two counts. 8 Neb. 486. 19 Id. 309. Verdict. 20 Neb. 159.

Sec. 413. 10 Neb. 592. 13 Id. 309. 16 Id. 671.

such indictment, and the evidence offered in proof thereof in the christian name or surname, or both christian and surname or other description whatever of any person whomsoever therein named or described, or in the name or description of any matter or thing whatsoever therein named or described, such variance shall not be deemed ground for an acquittal of the defendant, unless the court before which the trial shall be had, shall find that such variance is material to the merits of the case or may be prejudicial to the defendant.

SEC. 414. [**Description of instrument.**]—In any indictment for falsely making, altering, forging, printing, photographing, uttering, disposing of or putting off any instrument, it shall be sufficient to set forth the purport and value thereof.

SEC. 415. [**Engraved plate, etc.**]—In any indictment for engraving or making the whole or any part of any instrument, matter or thing, or for using or having the unlawful custody or possession of any plate or other material upon which the whole or any part of any instrument, matter or thing shall have been engraved or made, or for having the unlawful custody or possession of any paper upon which the whole or any part of any instrument, matter or thing shall have been made or printed, it shall be sufficient to describe such instrument, matter or thing by any name or designation by which the same may be usually known.

SEC. 416. [**Instruments in other cases.**]—That in all other cases whenever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known, or by the purport thereof.

SEC. 417. [**Allegation—Attempt to defraud.**]—It shall be sufficient in any indictment where it shall be necessary to allege an intent to defraud, to allege that the party accused did the act with intent to defraud without alleging an intent to defraud any particular person or body corporate, and on the trial of any such indictment, it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with the intent to defraud.

SEC. 418. [**Ownership.**]—When any offense shall be committed upon, or in relation to any property belonging to several partners or owners, the indictment for such offense shall be deemed sufficient if it allege such property belonged to any one or more of such partners or owners, without naming all of them.

SEC. 419. [**Joinder of offenses.**]—An indictment for larceny may contain also a count for obtaining the same property by false pretenses, or a count for embezzlement thereof, and for receiving or concealing the same property, knowing it to have been stolen; and the jury may convict of either offense, and may find all or any of the persons indicted guilty of either of the offenses charged in the indictment.

SEC. 420. [**Money described.**]—In every indictment in which it shall be necessary to make any averment as to any money, or bank bill, or notes, United States treasury notes, postal and fractional currency, or other bills, bonds or notes, issued by lawful authority and intended to pass and circulate as money, it shall be sufficient to describe such money or bills, notes, currency or bonds, simply as money, without specifying any particular coin, note, bill or bond; and such allegation shall be sustained by proof of any amount of coin or of any such note, bill, currency or bond, although the particular species of coin of which such amount was composed, or the particular nature of such note, bill, currency or bond shall not be proved.

SEC. 421. [**Election cases.**]—When an offense shall be committed in relation to any election, an indictment for such offense shall be deemed sufficient if it allege that such election was authorized by law, without stating the names of the officers holding the election, or the persons voted for, or the offices to be filled at such election.

SEC. 422. [**Perjury—Subornation.**]—That in every indictment for perjury or subornation of perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and before what court or authority the oath or affirmation was taken, averring such court or authority to have full power to administer the same, together with the proper averment or counts to falsify the matter or matters, wherein the perjury is assigned, without setting forth any part of any record or proceeding, in law or equity, other than as aforesaid, and without setting forth the commission or authority of the court, or other authority before whom the perjury was committed.

SEC. 423. [**Receiver of stolen goods, where prosecuted.**]—Whenever any person shall be liable to prosecution as the receiver of any personal property that shall have been feloniously stolen, taken or embezzled, he may be indicted in any county where he received or had such property, notwithstanding the theft was committed in another county.

SEC. 424. [**Crime committed on county line.**]—When an offense shall be committed on a county line, the trial may be in either county divided by such line; and where any offense shall be committed against the person of another, and the person committing the offense shall be in one county, and the person receiving the injury shall be in another county, the trial may be had in either of said counties.

SEC. 425. [**Manslaughter.**]—In any indictment for manslaughter, it shall not be necessary to set forth the manner in which, or the means by which the death was caused; but it shall be sufficient to charge that the defendant did unlawfully kill and slay the deceased.

CHAPTER XLI.—ARREST AND ITS INCIDENTS AFTER INDICTMENT.

SEC. 426. [**Warrant—Arrest.**]—A warrant may be issued in term time or in vacation of the court, on an indictment found or presentment made in any county, and when directed to the sheriff of the county where such indictment was found, or presentment made, it shall be lawful for such officer to pursue and arrest the accused named in such warrant, in any county of this state where he may be found, and commit him to jail, or hold him to bail, as provided in this code.

SEC. 427. [**Same—Non-resident.**]—When the party accused shall reside out of the county in which such indictment was found, it shall be lawful to issue a warrant thereon, directed to the sheriff of the county where the accused shall reside or may be found; and it shall be the duty of such officer to arrest the accused and convey him to the county from which such writ was issued, and there commit him to the jail of said county, or hold him [to bail,] as provided in the preceding section.

SEC. 428. [**Recognizance in vacation.**]—When any sheriff or other officer shall be charged with the execution of a warrant issued on any indictment for a misdemeanor, he shall, during the vacation of the court from which the writ issued, have authority to take the recognizance of the person so indicted, together with sufficient sureties, resident and freeholders in the county from which such writ issued, in a sum of not less than fifty nor more than five hundred dollars, conditioned for the appearance of such person on the first day of the next term of such court.

SEC. 429. [**Return and filing.**]—The sheriff or other officer shall return the said writ according to the command thereof, with the name of the surety or sureties, together with the recognizance taken as aforesaid; and the recognizance so taken and returned shall be filed and recorded by the clerk of the court to which the same was returned, and may be proceeded on in the same way as if such recognizance had been taken in said court during term time.

SEC. 430. [**Recognizance in case of felony.**]—When any person shall have been indicted for a felony, and the person so indicted shall not have been arrested or recognized to appear before the court, the court may, at their discre-

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SEC. 430, Taken before person unauthorized by law is void as a common law obligation **20 Neb. 80.**

tion, make an entry of the cause on their journal, and may order the amount in which the party [indicted] may be recognized for his appearance by any officer charged with the duty of arresting him.

Sec. 431. **[Same—Indorsement.]**—The clerk issuing a warrant on such an indictment shall indorse thereon the sum in which the recognizance of the accused was ordered, as aforesaid, to be taken.

Sec. 432. **[Same.]**—The officer charged with the execution of the warrant aforesaid shall take the recognizance of the party accused in the sum ordered as aforesaid, together with good and sufficient sureties, conditioned for the appearance of the accused at the return of the writ before the court out of which the same issued; and such officer shall return such recognizance to the said court, to be recorded and proceeded on as provided in this code.

Sec. 433. **[Return of all recognizances.]**—All recognizances taken during vacation of any court, by any judge or other officer thereof authorized to take them, shall be signed and sealed by the parties, and certified to by the officer taking the same.

Sec. 434. **[Indictment of convicts.]**—Whenever any convict in the penitentiary shall be indicted for any offense committed while confined therein, said convict shall remain in the custody of the warden of said penitentiary, subject to the order of the district court of the county where the penitentiary, in which such convict is confined, is situate.

CHAPTER XLII.—Motions and Issues upon the Indictment.

Sec. 435. **[Two indictments for same act.]**—If there be at any time pending against the same defendant two or more indictments for the same criminal act, the prosecuting attorney shall be required to elect upon which he will proceed; and upon trial being had thereon the remaining indictment shall be quashed.

Sec. 436. **[Indictment recorded—Copy for accused.]**—The clerk of the district court shall, upon the filing of any indictment with him, and after the peson indicted is in custody or let to bail, cause the same to be entered of record on the journal of said court, and in case of the loss of the original, such record or a certified copy thereof shall be used in place thereof upon the trial of the cause. And within twenty-four (24) hours after the filing of an indictment for felony, and in every other case on request, the clerk shall make and deliver to the sheriff, the defendant, or his counsel a copy of the indictment, and the sheriff on receiving such copy shall serve the same upon the defendant; and no one shall be, without his assent, arraigned or called on to answer to any indictment until one day shall have elapsed, after receiving in person or by counsel, or having an opportunity to receive a copy of such indictment as aforesaid. [Amended 1877, 4.]

Sec. 437. **[Counsel for accused.]**—The court before whom any person shall be indicted for any offense which is capital, or punished by imprisonment in the penitentiary, is hereby authorized and required to assign to such person counsel not exceeding two, if the prisoner has not the ability to procure counsel, and they shall have full access to the prisoner at all reasonable hours; and it shall not be lawful for the county clerk or county commissioners of any county in this state to audit or allow an account, [bill,] or claim hereafter presented by an attorney or counselor at law for services performed under the provisions of this section, until said account, bill, or claim shall have been examined and allowed by the court before whom said trial is had, and the amount so allowed for such services certified by said court; *Provided,* That no such account, bill, or claim shall in any case, except in cases of homicide, exceed one hundred dollars.

Sec. 438. **[Time given.]**—The court shall allow the accused a reasonable time to examine the indictment and prepare exceptions thereto.

Sec. 439. **[Pleas and motions.]**—The accused may except to an indict-

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Sec. 437. Cited 14 Neb. 18.

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found against the defendant, or if upon the arraignment the accused offer no plea in bar, he shall plead "guilty" or "not guilty;" but if he plead evasively, or stand mute, he shall be taken to have plead "not guilty."

SEC. 452. [**Plea of guilty.**]—If the accused plead "guilty," the plea shall be recorded on the indictment, and the accused shall be placed in the custody of the sheriff until sentence.

SEC. 453. [**Plea of not guilty.**]—If the accused plead "not guilty," the plea shall be entered on the indictment, and the prosecuting attorney shall, under the direction of the court, designate a day for trial, which shall be a day of the term at which the plea is made, unless the court for good reasons continue the case to a subsequent term.

SEC. 454. [**Accused insane, etc.**]—A person that becomes lunatic or insane after the commission of a crime and misdemeanor, ought not to be tried for the offense during the continuance of the lunacy or insanity. If, after verdict of guilty, and before judgment is pronounced, such person become lunatic or insane, then no judgment shall be given while such lunacy or insanity shall continue. And if, after judgment and before execution of the sentence, such person shall become lunatic or insane, then in case the punishment be capital, the execution thereof shall be stayed until the recovery of said person from the insanity or lunacy. In all such cases it shall be the duty of the court to impanel a jury to try the question, whether the accused be, at the time of impaneling, insane or lunatic.

CHAPTER XLIII.—CHANGE OF VENUE.

SEC. 455. [**Affidavit.**]—All criminal cases shall be tried in the county where the offense was committed, unless it shall appear to the court by affidavits that a fair and impartial trial cannot be had therein; in which case the court may direct the person accused to be tried in some adjoining county.

SEC. 456. [**Transcript—Costs.**]—When the venue is changed to an adjoining county, the clerk of the court in which the indictment was found shall make a certified transcript of all the proceedings in the case, which, together with the original indictment, he shall transmit to the clerk of the court to which the venue is changed, and the trial shall be conducted in all respects as if the offender had been indicted in the county to which the venue has been changed. All costs, fees charges and expenses accruing from a change of venue, together with all costs, fees, charges and expenses made or incurred in the trial of, or in keeping, guarding and maintaining the accused shall be paid by the county in which the indictment was found, and the clerk of the trial court shall make a statement of the costs, fees, charges and expenses aforesaid, and certify and transmit the same to the clerk of the district court where the indictment was found, to be by him entered upon his docket and collected and paid as if a change of venue had not been had. [1883, chap. LXXXIV. Amended 1887 chap. 110. Took effect April 2, 1887.]

SEC. 457. [**Warrant.**]—When a court has ordered a change of venue, a warrant shall be issued by the clerk, directed to the sheriff, commanding him safely to convey the prisoner to the jail of the county where he is to be tried, there to be safely kept by the jailor thereof, until discharged by due course of law.

SEC. 458. [**Witnesses.**]—When a change of venue is allowed, the court shall recognize the witnesses on the part of the state to appear before the court in which the prisoner is to be tried.

CHAPTER XLIV.—PREPARATION FOR EVIDENCE.

SEC. 459. [**Subpœna.**]—In all criminal cases it shall be the duty of the

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SEC. 453. Failure to endorse plea on back not fatal. 5 Neb. 380.

SEC. 455. Change discretionary. 4 Neb 286. 11 Id. 18. But see 16 Id. 391, 617. Counter affidavits proper. 4 Neb. 286.

SEC. 456. 5 Neb. 380. 10 Id. 304.

clerk, upon a precipe being filed, to issue writs of subpœna for all witnesses named therein, directed to the sheriff of his county, or of any county of the state where the witnesses reside or may be found, which shall be served and returned as in other cases; and such sheriff, by writing indorsed on said writs, may depute any disinterested person to serve and return the same.

Sec. 460. [**Return.**]—If the subpœna be served by such special deputy, it shall be his duty, after serving the same, to return thereon the manner in which the same was served; and also make oath or affirmation to the truth of said return, before some person competent to administer oaths; which shall be indorsed on such writ, and the same shall be returned according to the command thereof by the person serving the same through the post office or otherwise.

Sec. 461. [**Witnesses for defendant.**]—Any person accused of crime amounting to felony, shall have compulsory process to enforce the attendance of witnesses in his behalf, and they shall be paid for their mileage and per diem the same fees as are now, or may hereafter be allowed by law, to witnesses for the state in the prosecution of such accused person, and in case such accused person is convicted and is unable to pay such mileage and per diem to his witnesses, they shall be paid out of the county treasury of the county wherein such crime was committed; and in case such accused person is acquitted upon his trial, the fees of his witnesses shall be likewise paid out of such county treasury; *Provided*, however, that in no case shall the fees of any such witnesses be so paid, unless, before the trial of such accusation such accused person shall make and file his affidavit stating the names of his witnesses, and that he has made a statement to his counsel of the facts he expects to prove by such witnesses and has been advised by such counsel that their testimony is material on the trial of such accusation, and shall also file an affidavit of such counsel that he deems the testimony of such witnesses necessary and material on behalf of such accused person, whereupon the court or judge shall make an order directing that such witnesses, not exceeding fifteen in number, be paid out of the county treasury of the county in which such accusation shall be made. [1885, chap. 106.]

Sec. 462. [**Depositions.**]—Where any issue of fact is joined on any indictment, and any material witness for the defendant resides out of the state, or residing within the state, is sick or infirm, or is about to leave the state, such defendant may apply in writing to the court in term time, or the judge thereof in vacation, for a commission to examine such witness upon interrogatories thereto annexed, and such court or judge may grant the same, and order what and for how long a time notice shall be given to the prosecuting attorney before the witness shall be examined.

Sec. 463. [**Same.**]—The proceedings in taking the examination of such witness and returning it to court, shall be governed in all respects as the taking of depositions in all civil cases.

CHAPTER XLV.—Trial of Indictments.

Sec. 464. [**Presence of accused.**]—No person indicted for a felony shall be tried unless personally present during the trial. Persons indicted for a misdemeanor may, at their own request, by leave of the court, be put on trial in their absence. The request shall be in writing, and entered on the journal of the court.

Sec. 465. [**Separate trial.**]—When two or more persons are indicted for felony, each person so indicted shall, on application to the court for that purpose, be separately tried, and every person charged with felony shall be furnished, previous to his trial, with a copy of the indictment, and at his request, with a list of the witnesses upon whose testimony the indictment was found. [Amended 1875, 17.]

Sec. 462. If suppressed, and no exception taken, order will not be considered by supreme court. 7 Neb 329.

Sec. 464. Presence of prisoner necessary. 1 Neb. 391. 4 Id. 227. 5 Id. 353. If record does not so show at time sentence is pronounced, cause will be remanded for sentence. 4 Neb. 233. If record once show presence, presumption is that it continues. 13 Neb. 332. Voluntary withdrawal of prisoner for a few moments not ground for new trial when, upon his return, witness was re-examined, covering questions asked during such absence. 13 Neb. 601.

SEC. 465 *a*. **[Special venire, how drawn.]**—SEC. 1. That when two or more persons shall have been charged together in the same indictment or information with a crime, and one or more shall have demanded a separate trial, and had the same, and when the court shall be satisfied, by reason of the same evidence being required in the further trial of parties to the same indictment or information that the regular panel and bystanders are incompetent because of having heard the evidence, to sit in further causes in the same indictment or information, then it shall be lawful for the court to require the clerk of the court to write the names of sixty electors of the county wherein said cause is being tried, each upon a separate slip of paper, and place the same in a box, and after the same shall have been thoroughly mixed, to draw therefrom such a number as in the opinion of the court will be sufficient from which to select a jury to hear said cause, and the electors whose names are so drawn shall be summoned by the sheriff to forthwith appear before the court, and after having been examined, such as are found competent, and shall have no lawful excuse for not serving as jurors, shall constitute a special venire from which the court shall proceed to have a jury impanelled for the trial of the cause, and the court may repeat the exercise of this power until all the parties charged in the same indictment or information shall have been tried. [1881 § 1, chap. 34.]

SEC. 466. **[Jury.]**—In all [criminal] cases, except as may be otherwise expressly provided, the jury summoned and impanelled according to the provisions of the laws in force relating to the summoning and impaneling of juries in other cases, shall try the accused.

SEC. 467. **[Challenge of jurors.]**—Every person arraigned for any crime, punishable with death, shall be admitted, on his trial, to a peremptory challenge of sixteen jurors, and no more; and every person arraigned for any offense that may be punishable by imprisonment for a term exceeding eighteen months, shall be admitted to a peremptory challenge of eight jurors; and in all other criminal trials, the defendant shall be allowed a peremptory challenge of six jurors. The attorney prosecuting on behalf of the state, shall be admitted to a peremptory challenge of six jurors, in all cases where the offense charged is punishable with death, and of three jurors in all other cases.

SEC. 468. **[Causes for challenge.]**—The following shall be good causes for challenge to any person called as a juror on the trial of any indictment: *First*. That he was a member of the grand jury which found the indictment. *Second*. That he has formed or expressed an opinion as to the guilt or innocence of the accused; *Provided*, That if a juror shall state that he has formed or expressed an opinion as to the guilt or innocence of the accused, the court shall thereupon proceed to examine, on oath, such juror as to the ground of such opinion; and if it shall appear to have been founded upon reading newspaper statements, communications, comments, or reports, or upon rumor, or hearsay, and not upon conversations with witnesses of the transactions, or reading reports of their testimony, or hearing them testify, and the juror shall say, on oath, that he feels able notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that such juror is impartial, and will render such verdict, may, in its discretion, admit such juror as competent to serve in such case. *Third*. In indictments for an offense, the punishment whereof is capital, that his opinions are such as to preclude him from finding the accused guilty of an offense punishable with death. *Fourth*. That he is a relation, within the fifth degree, to the person alleged to be injured, or attempted to be injured, or to the person on whose complaint the prosecution was instituted, or to the defendant. *Fifth*. That he has served on a petit jury which was sworn in the same cause against the same

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SEC. 467. Party waiving peremptory challenges cannot complain of disqualification of juror known at time. 4 Neb. 75. 13 Id. 437. Record must show ground of challenge, ruling of court, and exception. 5 Neb. 353. Although there may be error in overruling a challenge to a juror for cause, yet if the prisoner be not compelled to exhaust his peremptory challenges to exclude him from the panel, it is error without prejudice. 13 Neb. 213.

SEC. 468. Opinions which disqualify. 4 Neb. 547. 5 Id. 34, 183. 11 Id 20. 20 Id. 237. Opinions which do not. 4 Neb. 74 5 Id. 415. 7 Id. 348. 15 Id. 385. 18 Id. 77. If juror have convictions which preclude him from finding accused guilty on circumstantial evidence, he is incompetent. 8 Neb. 412.

defendant, and which jury either rendered a verdict which was set aside, or was discharged after hearing the evidence. *Sixth.* That he has served as a juror in a civil case brought against the defendant for the same act. *Seventh.* That he has been in good faith subpœned as a witness in the case. *Eighth.* That he is an habitual drunkard. *Ninth.* The same challenges shall be allowed in criminal prosecutions that are allowed to parties in civil cases.

SEC. 473. No person shall be disqualified as a witness in any criminal prosecution, by reason of his interest in the event of the same, as a party or otherwise, or by reason of his conviction of any crime, but such interest or conviction may be shown for the purpose of affecting his credibility. In the trial of all indictments, complaints, and other proceedings against persons charged with the commission of crimes or offenses, the person so charged shall, at his own request, but not otherwise, be deemed a competent witness; nor shall the neglect or refusal to testify create any presumption against him, nor shall any reference be made to, nor any comment upon, such neglect or refusal.

SEC. 474. Co-defendant may be discharged, to become State witness; and order is a bar to future prosecution.

SEC. 475. Injured female's testimony in seduction, etc., must be supported by other evidence.

SEC. 476. In conspiracy at least one overt act must be proven, and additional circumstances.

SEC. 479. A view of premises where any material fact is said to have occurred, may be had by jury.

SEC. 480. When it shall appear at any time before the verdict that a mistake has been made in charging the proper offense, the accused shall not be discharged if there appear to be good cause to detain him in custody; but the court must recognize him to answer to the offense on the first day of the next term of such court; and shall, if necessary, likewise recognize the witnesses to appear and testify.

SEC. 482. On exceptions taken by defendant, and motion for a new trial overruled, the bill shall contain all the evidence.

SEC. 485. Discharge of jury shall state, in journal entry, the reasons therefor, and not prejudice prosecution.

SEC. 487. Upon an indictment for an offense consisting of different degrees, the jury may find the defendant not guilty of the degree charged, and guilty of any degree inferior thereto, and upon an indictment for any offense, the jury may find the defendant not guilty of the offense, but guilty of an attempt to commit the same, where such an attempt is an offense.

SEC. 488. When the indictment charges an offense against the property of another by larceny, embezzlement, or obtaining under false pretenses, the jury, on conviction, shall ascertain and declare in their verdict, the value of the property stolen, embezzled or falsely obtained.

NEW TRIALS AND MOTION IN ARREST.

SEC. 490. A new trial, after a verdict of conviction, may be granted on the application of the defendant, for any of the following reasons, affecting materially his substantial rights: *First.* Irregularity in the proceedings of the Court, or the Prosecuting Attorney, or the witnesses for the state, or any order of the court, or abuse of discretion, by which the defendant was prevented from having a fair trial. *Second.* Misconduct of the jury, or the prosecuting attorney, or of the witnesses of the State. *Third.* Accident or surprise, which ordinary prudence could not have guarded against. *Fourth.* That the verdict is not sustained by sufficient evidence or is contrary to law. *Fifth.* Newly discovered evidence material for the defendant, which he could not, with reasonable diligence, have discovered and produced at the trial. *Sixth.* Error of law occurring at the trial.

SEC. 491. The motion may be in statutory language, and must be made in three days after verdict.

SEC. 493. Motion in arrest, is for want of jurisdiction, or for insufficiency of indictment, other than form; if sustained, the Court may hold accused for a new indictment, in its discretion.

JUDGMENT AND SENTENCE.

SEC. 497. Whenever a fine shall be the whole or part of a sentence, the court may, in its discretion, order that the person sentenced shall remain confined in the county jail until the amount of such fine and costs are paid.

SEC. 498. Sentence to penitentiary shall state time of "solitary" confinement in cell if any.

SEC. 499. Recognizance to keep the peace for two years, may be required of convicts when sentenced.

SEC. 500. Committal until fine is paid, may be ordered.

SEC. 502, Sentence to jail may include "hard labor," and "bread and water" diet.

PROCEEDINGS IN ERROR.

SEC. 503. Suspension for error proceedings, may be allowed, in murder cases, for one hundred days, and in other cases for "a reasonable time to apply for the writ," but only on bond given in misdemeanor.

SEC. 505. In felony, the defendant is ordered into custody; and if he escape may be recaptured in any county.

SEC. 506. Failure to prosecute writ of error at the end of suspension, subjects convict to immediate execution of sentence; also on affirmance.

SEC. 508. Writs of error issue on petition and transcript, and payment of costs; but if defendant swear that he is too poor to pay, costs are entered on the mandate and paid by county.

SEC. 509. In capital cases, on allowance of writ, the Court or Judge will order suspension, until final hearing; and the Appelate Court may reduce the sentence.

SEC. 515. The prosecuting attorney may appeal, for the State, in which case an attorney shall be appointed to contest the case against him; his fee to be paid by the county.

SEC. 517. The judgment of the court in the case in which the bill was taken, shall not be reversed, nor in any manner affected; but the decision of the Supreme Court shall determine the law to govern in any similar case which may be pending at the time the decision is rendered, or which may afterward arise in the State.

EXECUTIONS.

SEC. 518. Every person sentenced to the penitentiary shall, within thirty days, and as early as practicable after his sentence, unless the execution thereof be suspended, be conveyed to the penitentiary of this State, by the Sheriff of the county in which the conviction took place, and shall there be delivered into the custody of the warden of said penitentiary, together with a copy of the sentence of the court ordering such imprisonment, there to be safely kept until the term of his confinement shall have expired, or he shall be pardoned. If the execution of the sentence be suspended, and the judgment is afterward affirmed, the defendant shall be conveyed to the penitentiary within thirty days after the court shall direct the sentence to be executed.

SEC. 519. [**Assistance, etc.**]—The sheriffs of the several counties of this state, during the time they shall be employed in conveying to the penitentiary any person sentenced to imprisonment therein, shall have the same power and authority to secure him in any jail within the state, and to demand the assistance of any sheriff, jailer, or other person within this state, in keeping such prisoner, as if the sheriff were in his own proper county; and all such sheriffs, jailers, or other persons so called upon, shall be liable, on refusal, to the same penalties as if the sheriff making the demand were in his own county.

SEC. 520. [**Sentence to jail.**]—When any person convicted of an offense shall be sentenced to imprisonment in the county jail, the court or magistrate shall order the defendant into the custody of the sheriff, constable, or other proper officer, and shall issue to such officer a warrant of commitment, who shall deliver the convict, together with a copy of the warrant, to the jailer, in whose custody he shall remain in the jail of the proper county, until the term of his confinement shall have expired, or he shall have been pardoned, or otherwise legally discharged.

SEC. 521. [**Execution against body.**]—In all cases of misdemeanor, in which courts or magistrates shall have power to fine any offender, and shall render judgment for such fine, it shall be lawful to issue executions for the same, with the costs taxed against said offender, to be levied on the goods and chattels of any such offender and, for want of the same, upon the body of said offender, who shall thereupon be committed to the jail of the proper county until said fine and costs be paid, or secured to be paid, or the offender be otherwise discharged according to law.

SEC. 522. [**Imprisonment at hard labor in such cases.**]—When the convict is adjudged to be imprisoned for fines, or costs, as provided for in section five hundred, the sentence and execution may, in the discretion of the court, or magistrate, require the imprisonment to be at hard labor by the convict. [Amended 1875, 18.]

SEC. 523. [**No dungeon or jail in county.**]—Where any jail, in any county in this state, shall not have a cell or dungeon therein, then, and in that case, when the court shall sentence any person or persons to imprisonment in the cell of any jail, under the provisions of this act, the person or persons so sentenced shall be confined in that part of the jail usually allotted to the confinement of criminals, or such convict may be imprisoned as provided in section three hundred and seventy-seven, when there is the necessity therefor mentioned in said section.

SEC. 524. [**Lien of judgments—Exemptions from execution.**]—Judgments for fines and costs in criminal cases shall be a lien upon all the property of the defendant within the county from the time of docketing the case by the clerk of the proper court, and judgments upon forfeited recognizance shall be a like lien from the time of forfeiture. No property of any convict shall be exempt from execution, issued upon any such judgment as aforesaid, against such convict, except in cases where the convict shall be sentenced to the penitentiary for a period of more than two years, or to suffer death, in which cases there shall be the same exemption as at the time may be provided by law for civil cases.

SEC. 525. [**Execution for fines, costs and forfeited recognizance.**]—It shall be the duty of the clerk of the district court to issue execution for every judgment rendered during the term, for fines and forfeited recognizance, and for the costs in such cases, which remain unpaid and unreplevied; and upon like condition each magistrate shall issue execution forthwith for fines and costs assessed by him.

SEC. 526. [**Replevy of fine and costs.**]—It shall and may be lawful for any person or persons, convicted of any criminal offense, to replevy the judgment for the fine and costs, or the costs only when no fine shall be imposed, by such convicted person or persons, with one or more good and sufficient freeholders entering into a recognizance before the court or magistrate, to the people of this state, for the payment of such fine and costs, or costs only, within five months from the date of the acknowledgment; which recognizance so taken, is hereby declared valid in law, and to create a lien on the real estate of all such persons as shall acknowledge the same; and upon the breach thereof, execution shall be issued against the goods and chattels, lands and tenements of the persons who entered into recognizance, in the same manner as if it had been a judgment, which execution shall be collected in the same manner as is prescribed in the preceding section. No *scire facias* shall be necessary previous to issuing such execution.

Sec. 527. [**Same.**]—In all cases where the person or persons, convicted as aforesaid, shall replevy the fine and costs, as is provided in the last preceding section, no execution shall issue for said fine and costs, as prescribed in section five hundred and twenty-five; and further, such person or persons, after replevying the fine and costs as aforesaid, shall not be imprisoned for such fine and costs, but such person or persons shall be wholly discharged from any imprisonment in consequence of any conviction, unless where imprisonment is by this code made a part of the punishment; in that case such convicted person or persons shall be discharged from his, or her, or their imprisonment at the expiration thereof, if he, she or they have replevied the fine and costs as aforesaid.

Sec. 527 [*a.*] [**Execution to any county.**]—Executions for fines and costs of prosecution, and on recognizances taken in pursuance of the preceding section, may be issued into any county in this state.

Sec. 528. [**Release of fine and costs.**]—Whenever it shall be made satisfactorily to appear to the district court, or to the probate judge of the proper county, after all legal means have been exhausted, that any person who is confined in jail for any fine or costs of prosecution, for any criminal offense, hath no estate wherewith to pay such fine and costs, or costs only, it shall be the duty of said court or judge to discharge such person from further imprisonment, for such fine and costs; which discharge shall operate as a complete release of such fine and costs; *Provided,* That nothing herein shall authorize any person to be discharged from imprisonment before the expiration of the time for which he or she may be sentenced to be imprisoned, as part of his or her punishment, nor until the convict shall have been imprisoned at least one day for every three dollars of the amount adjudged against him.

Sec. 529. [**Transcript of judgment filed with clerk.**]—In every case, whenever it is desirable to obtain execution to be issued to another county, or against the lands or real estate of any person against whom a judgment for fine or costs has been rendered by a magistrate, the magistrate may file with the clerk of the district court of the county wherein such magistrate holds his office, a transcript of the judgment and proceedings in the cause, whereupon such clerk shall enter the cause upon the proper docket for execution to be forthwith issued thereon by such clerk, and served in all respects as though the judgment had been rendered in the district court of such county.

Sec. 530. [**Treatment of prisoners.**]—When the physician regularly employed to have the medical care of persons in a county jail, shall certify in writing to the jailer, that the health or safety of any convict confined in such jail requires that he be treated in a manner different from that prescribed by the sentence of such convict, such jailer shall render to the convict such other and different treatment as shall be specified in such certificate as necessary, and may discharge him altogether if required by such certificate; *Provided,* That such physician be one employed for such medical care by the approval of the county commissioners.

Sec. 531. [**Employing convicts in jail.**]—For the purpose of enabling the county commissioners of any county in this state to employ in a profitable manner, all persons who have heretofore been, or may hereafter be sentenced to hard labor in the county jail; which is declared to extend to any designated place.

MONEY RECEIVED AND PAID.

SEC. 533. Money received for fines or forfeited bonds, by executive officers shall be paid to Magistrate or Clerk within ten days; and by them to County Treasurer within the next ten days; and costs belonging to individuals, on demand.

SEC. 535. No costs shall be paid from the county treasury in any case of prosecution for a misdemeanor, or for surety to keep the peace, except as provided in section five hundred and forty-one.

SEC. 536. But in felony examinations, transcripts to be filed with County Clerk, and County Commissioners will allow such part of the costs, only, as they find "lawful and just," to be paid in county warrants. On conviction, judgment against defendant for amount allowed; and costs in District Court to be treated same way; but may be withheld pending appeal.

SEC. 539. Each and every magistrate shall, on or before the first day of February in each year, make out and deliver to the County Clerk of the county in which he may reside, a statement in writing of all fines assessed by him for the year ending on the first day of January next preceding, showing the name of the party and the amount of the fine, the time when assessed, whether execution was issued thereon, and the return upon the same, or if no execution has been issued, the reasons for not issuing the same; and in case no fines have been assessed by such magistrate he shall return that fact, and said statement shall be certified by such magistrate to be a true and correct statement from his docket.

SEC. 540. Any officer who shall pay to the County Treasurer of any county any money collected for any fine, costs, forfeited reconizance, or proceeds of jail labor, shall take therefor the said Treasurer's duplicate receipts, one of which shall be immediately filed with the County Clerk, and the same shall be by him preserved in his office. All such receipts shall show upon the face thereof, definitely, what the moneys paid in were for, whether for fines, costs, forfeited reconizance, or jail labor, and the sums paid on account of each of said causes, and also the cause in which each item is paid, giving the name of the defendant in each case. All such moneys arising from fines and recognizance, shall be credited by such Treasurer to the county school fund, and the costs and proceeds of jail labor he shall credit to the county general fund. Whenever any costs in any criminal case shall be paid from the County Treasury, such payment must be made from the county general fund; and when any warrant is drawn by the County Clerk upon the Treasurer of the county for the payment of such costs, a true record of the same and the definite purpose of every such warrant shall be recorded in his office, showing the cause in which such costs are paid.

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SEC. 541. Uncollectable costs, in misdemeanors, to be reported in detail to County Clerk; and in April and October sessions, County Commissioners may order such parts as they think best to be paid out of fund received under two foregoing sections.

SEC. 541*a*. Witness fees, in criminal District Court cases, paid by county.

SPECIAL PROCEEDINGS IN HOMICIDES.

SEC. 542. Notice to Governor, of killing, shall be given by Sheriff or Coroner; who shall offer reward for absconding suspect, not exceeding two hundred dollars; and paid to claimant on certificate of conviction from trial Judge.

SEC. 545. If any person shall give any mortal blow, or administer any poison to another, in any county within this State, with intent to kill, and the party so stricken or poisoned thereof, shall die in any other county or State, the person giving such mortal blow, or administering such poison, may be tried and convicted of murder, or manslaughter, as the case may be, in the county where such mortal blow was given, or poison administered.

SEC. 547. Hanging shall be in an enclosure, in vicinity of jail, if there be one; unless it can "conveniently" be carried on within the jail; in presence of ten persons; one clergyman, three chosen by convict, and four by Sheriff.

SEC. 552. Return of officer, to be subjoined to record of sentence; but if convict appear insane, before execution, an inquest shall be ordered; attended by Judge, Clerk, and District Attorney; finding to be recorded by Clerk; and if against sanity of prisoner, execution suspended until ordered by Governor.

SEC. 556. Pregnant female, to be treated in like manner.

SEC. 558. Reprieves, granted on condition, to specify conditions in the warrant, and person accepting shall sign conditions, in presence of two witnesses, who shall prove same before Clerk, when it will be by him recorded in journal; if conditions are afterwards violated, accused may be proceeded against as in cases of escaped convict.

PARDONS, ETC.

SEC. 568. Pardons and reprieves, with reasons therefor, to be reported to the next session of Legislature; and also all fines remitted.

ERRORS FROM INFERIOR COURTS.

SEC. 572. That in all criminal cases tried before County Judges, Police Judges, Justices of the Peace, Police Magistrates, and all other courts inferior to the District Court, wherein the accused shall be convicted of a violation of any law of this State, or of an ordinance of any municipal corporation in this State, and adjudged to pay a fine or to be imprisoned, or both, such judgment may be reviewed on error in the District Court of the county in which any such trial and conviction may be had.

SEC. 573. Transcripts shall be made and delivered to appellant, but original papers shall be sent up.

SEC. 575. When such petition and precipe are filed in any court a summons in error, returnable in thirty days, shall be issued by the Clerk, unless the Judge of such court prescribe another day for the return, which summons shall be directed to the Sheriff of the county in which the District Attorney resides, containing such description of the judgment as to identify it, reciting the fact that a petition in error has been filed, and command such Sheriff to notify the District Attorney of the time it will be for hearing; and if original papers are required, it shall command the Sheriff to notify the officer in whose possession they are to forward them to such Clerk. In case the District Attorney should reside in some county other than the one in which such proceedings in error are to be had, the Clerk may send the summons in error by mail to the proper sheriff, who may return the same by mail to the Clerk of the court from which it was issued.

SEC. 577. Supersedeas allowed on bond conditioned to prosecute appeal, and surrender maker to custody of officer, on affirmance.

PROSECUTIONS BY INFORMATION.

SEC. 578. Jurisdiction is given all courts and magistrates to prosecute offenders on information, as on indictment.

SEC. 579. All informations shall be filed during term, in the court having jurisdiction of the offense specified therein, by the Prosecuting Attorney of the proper county as informant; he shall subscribe his name thereto, and indorse thereon the names of the witnesses known to him at the time of filing the same; and at such time before the trial of any case as the court may, by rule or otherwise, prescribe, he shall indorse thereon the names of such other witnesses as shall then be known to him.

SEC. 580. Verification is to be made by prosecuting attorney, complainant, or "some other person."

SEC. 583. Prosecuting attorney shall attend preliminary examinations, and may file with Clerk his reasons, in fact and law, why the case should not be further prosecuted; but may be overruled by the court.

SEC. 584. Grand juries shall not hereafter be drawn, summoned, or required to attend at the sittings of any court within this State, as provided by law, unless the Judge thereof shall so direct by writing, under his hand, and filed with the Clerk of said Court.

SEC. 585. No information shall be filed against any person for any offense, until such person shall have had a preliminary examination therefor as provided by law, before a Justice of the Peace or other examining magistrate or officer, unless such person shall waive his right to such examination *Provided, however,* That information may be filed without such examination against fugitives from justice, and any fugitive from justice against whom an information shall be filed may be demanded by the Governor of this State of the executive authority of any other State or Territory, or of any foreign government, in the same manner, and the same proceedings may be had thereon, as provided by law in like cases of demand upon indictment filed,

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PART IV.—APPENDIX.

CORRECTIONS.

This work went to press before the approval of the town site commissioner law, (on page 38, anterior) by the President, was made public, May 15, 1889. The first clause of the first section thereof should read as follows:

"That so much of the public lands, *situated in the Territory of Oklahoma*, *now open to settlement*," etc.

And the following words should be added to the said first section, to wit: "*Provided*, That the Secretary of the Interior may, when practicable, cause more than one town site to be entered and the trust thereby created executed in the manner herein provided by a single board of trustees, but not more than seven boards of trustees in all shall be appointed for said Territory, and no more than two members of any of said boards shall be appointed from one political party."

And section 6 of the act, as finally approved, reads as follows:

"SEC. 6. That all entries of town sites now pending on application hereafter made under this act, shall have preference at the local land office of the ordinary business of the office, and shall be determined as speedily as possible, and if an appeal shall be taken from the decision of the local office in any such case to the Commissioner of the General Land Office, the same shall be made special and disposed of by him as expeditiously as the duties of his office will permit, and so if an appeal should be taken to the Secretary of the Interior. And all applications heretofore filed in the proper land office shall have the same force and effect as if made under the provisions of this act, and upon the application of the trustees herein provided for, such entries shall be prosecuted to the final issue in the names of such trustees, without other formality, and when final entry is made, the title of the United States to the land covered by such entry shall be conveyed to said trustees for the uses and purposes herein provided."

DOMESTIC AND WILD ANIMALS.

SYNOPSIS OF CHAPTER 4, NEBRASKA LAWS, APPLICABLE TO OKLAHOMA.

SEC. 2. Cattle drover, driving off another's cattle, intentionally, or through neglect, liable to $100 fine for each head.

SEC. 4. Stallions, Mexican, Texan and Cherokee bulls, and Mexican rams, are prohibited from running at large, and may be castrated, and owners fined.

SEC. 10. Owners of diseased cattle must restrain them from running at large; and shall not drive them into or through the State—penalty, fine of

$5 to $20; and justices may order constable to empound them, at a cost of twenty-five cents per head; fines to go to school fund.

SEC. 16. Owners of dogs liable for damages done by them.

SEC. 18. Municipalities may tax dogs $5 each, to create a fund to pay for said damages within their limits; and dogs may be killed by any person who witnesses the damage, or finds a dog without a metal collar, inscribed with owner's name; and neglect of owner to collar his dog is a misdemeanor; penalty, $25.

SEC. 24. Bounties for scalps of wolves, wild cats and coyotes, to be paid by State Auditor, also by counties, (sec. 29,) if so determined at election to be ordered on petition of fifty tax payers.

SEC. 28. Persons keeping live stock for hire, have a lien thereon for their charges.

SEC. 40. Owners of stallions, bulls, and jacks, have a lien on offspring for nine months after birth, for service, by filing description with county clerk—lien to be foreclosed as chattel mortgage.

SEC. 58. All owners of sheep shall mark or brand them, and keep them so marked or branded. Penalty for neglect, fine, $5 to $50; and on judgment therefor, no property is exempt from sale.

SEC. 60. Hogs or other animals dying of cholera or other diseases, shall be buried by owner or keeper; and any one selling carcases for manufacturing purposes, is liable to fine of $100, and imprisonment six months.

[In addition to the foregoing general provisions there are two special acts, in the "compiled laws," that can hardly be considered as "applicable" to the condition of Oklahoma. The one establishes a kind of sheep bureau, and creates the office of sheep inspector, with elaborate directions for the regulation of his functions.

The other, containing 27 sections, creates the office of "State Veterinarian," and enumerates his various duties, and defines his powers, in respect to the examination and destruction of diseased animals, and for promulgating quarantine regulations.]

AMENDMENTS.

[The following amendments to the Code of Civil Procedure were made by the Session Laws of 1889, to wit:]

AN ACT to amend section six hundred and seventy-seven (677) of the Code of Civil Procedure, Compiled Statues of 1887, and to repeal said original section.

Be it enacted by the Legislature of the State of Nebraska:

SECTION 1. That section six hundred and seventy-seven (677) of the Code of Civil Procedure, Compiled Statutes of 1887, be amended to read as follows:

Section 677. No appeal in any case in equity, now pending and undetermined, or which shall hereafter be brought, shall operate as a supersedeas, unless the appellant or appellants shall, within twenty days next after the rendition of such judgment or decree, or the making of such final order, execute to the adverse party a bond with one or more sureties as follows:

First—When the judgment, decree, or final order appealed from directs the payment of money, the bond shall be in double the amount of the judgment, decree, or final order, conditioned that the appellant, or appellants, will prosecute such appeal without delay, and pay all condemnation money and costs which may be found against him, or them, on the final determination of the cause in the supreme court.

Second—When the judgment, decree or final order directs the execution of a conveyance or other instrument, the bond shall be in such sum as shall be prescribed by the district court, or judge thereof, in vacation, conditioned that the appellant or appellants will prosecute such appeal without delay; and will abide and perform the judgment or decree rendered, or final order which shall be made by the supreme court in the cause.

Third—When the judgment, decree or order directs the sale or delivery of possession of real estate, the bond shall be in such sum as the court, or judge thereof in vacation, shall prescribe, conditioned that the appellant or appellants will prosecute such appeal without delay, and will not during the pendency of such appeal commit, or suffer to be committed, any waste upon such real estate.

Fourth—When the judgment, decree or final order dissolves or modifies any order of injunction, which has been, or hereafter may be granted, the supersedeas bond shall be in such reasonable sum as the court or judge thereof in vacation, shall prescribe, conditioned that the appellant or appellants will prosecute such appeal without delay, and will pay all costs which may be found against him, or them, on the final determination of the cause in the supreme court; and such supersedeas bond shall stay the doing of the act or acts, sought to be restrained by the suit, and continue such injunction in force, until the case is heard and finally determined in the supreme court. The undertaking given upon the allowance of the injunction, shall be and remain in effect until it is finally decided whether or not the injunction ought to have been granted.

Approved March 29th, 1889.

AN ACT to provide for supersedeas bonds in certain cases.

Be it enacted by the Legislature of the State of Nebraska:

SECTION 1. That in case of the dissolution or modification by any court, or any judge at chambers, of any temporary order of injunction which has been or may hereafter be granted, the court or judge so dissolving or modifying said order of injunction, shall at the same time fix a reasonable sum as the amount of a supersedeas bond, which the person or persons applying for said injunction may give, and prevent the doing of the act or acts, the commission of which was or may be sought to be restrained by the injunction so dissolved or modified.

SEC. 2. Such supersedeas bond shall be executed on or before twenty (20) days from the time of the order dissolving or modifying such injunction, shall be signed by one or more sufficient sureties, to be approved by the clerk of the court, and shall be conditioned that the party or parties who obtained such injunction shall pay to the defendant or defendants, all damages which he or they shall sustain by reason of said injunction, if it be finally decided that such injunction ought not to have been granted.

SEC. 3. Such supersedeas bond shall stay the doing of the act or acts sought to be restrained by the suit, and continue such injunction in force until the case is heard and finally determined by the judgment, decree or final order of the court in term time.

SEC. 4. All acts and parts of acts inconsistent herewith are hereby repealed.

Approved March 29th, 1889.

AN ACT to amend section fifty-one (51) of the Code of Civil Procedure, and to repeal said original section.

Be it enacted by the Legislature of the State of Nebraska:

SECTION 1. That section fifty-one (51) of the Code of Civil Procedure be amended so as to read as follows:

Section 51. All actions to recover damages for any trespass upon or any injury to real estate, shall be brought only in the county where such real estate is situated, and all actions for the following causes must be brought in the county in which the subject of the action is situated, except as provided in section fifty-two (52).

First—For the recovery of real property or of an estate or interest therein.

Second—For the partition of real property.

Third—For the sale of real property under a mortgage, lien or other incumbrance or charge.

Provided, All actions now pending in any district court for any of the causes mentioned in this section, not within the county wherein such real estate is situated, shall remain, be tried and disposed of in the county where commenced.

SEC. 2. Said section fifty-one (51), of the Code of Civil Procedure as heretofore existing, is hereby repealed.

Approved March 29th, 1889.

INDIANS, AND INDIAN LANDS IN OKLAHOMA TERRITORY

At this date, May 20, 1890, the Cherokee Commission, created by the act of March, 1889, (see page 3, ante.) are in active conference with the smaller Indian tribes, occupying the country adjoining the eastern border of the Oklahoma Territory, with a view of inducing them to accept citizenship, and an allotment of their lands in severalty, and of submitting to a sale of their surplus lands. At the same time, it is the policy of the Washington administration, according to their public utterances, to proceed immediately with negotiations, to the same end, with the larger tribes to the westward (Cheyennes and Arapahoes, and Comanches and Apaches), before renewing their interrupted conferences with the Cherokees, for a surrender of their claim of title to the "outlet," lying between the borders of Oklahoma Territory and the State of Kansas. This being the actual situation at the time this book is going through the press, the following tabular statement will be of interest to the people of the Territory. It exhibits the reservation lands and tribes, within the bounds of the new Territory, as lately defined by Congress, showing the number of members of each tribe entitled to allotment; the total amount of land belonging to each tribe; and the surplus that will remain after each Indian, of whatever age, shall have received his allotted quarter-section of 160 acres.

Name of tribe.	*Population.*	*Total acreage of reservation.*	*Surplus acreage after allotment.*
Osages	1,552	1,470,059	1,407,979
Kansas (Kaws)	225	100,157	95,137
Pawnees	1,045	283,120	241,220
Sacs and Foxes	457	479,667	461,387
Pottawatomies	550	575,877	553,877
Tonkawas	92	100,000	96,320
Poncas	574	101,894	93,284
Ottoes and Missouris	266	129,113	118,473
Iowas	89	228,418	225,158
Kickapoos	346	206,466	190,876
Cheyennes and Arapahoes	3,609	4,297,771	4,153,611
Wichitas	189	743,610	736,050
Kiowas, Comanches and Apaches	3,032	2,968,893	2,847,613
Total	10,374	11,685,035	10,025,195

The foregoing is exclusive of the five civilized tribes, namely, the Cherokees, Choctaws, Chickasaws, Creeks and Seminoles, which can become parts of Oklahoma Territory, by an affirmative popular vote to that effect.

TERRITORIAL OFFICERS.

GEO. W. STEELE,	*Governor.*
ROBERT MARTIN,	*Secretary.*
EDWARD B. GREEN,	*Chief Justice.*
ABRAHAM J. SEAY,	*Associate Justice.*
JOHN G. CLARK,.	*Associate Justice.*
WARREN S. LURTY,	*Marshal.*
—— ——	*Deputy.*
—— ——	*Deputy.*
—— ——	*Deputy.*
HORACE SPEED,	*United States Attorney*
—— ——	*Assistant.*
—— ——	*Assistant.*
—— ——	*Clerk Supreme Court.*
—— ——	*District Court Clerk, First District.*
—— ——	*District Court Clerk, Second District.*
—— ——	*District Court Clerk, Third District.*

GUTHRIE LAND OFFICE.

JOHN I. DILLE,	*Register.*
C. M. BARNES,	*Receiver.*

KINGFISHER LAND OFFICE.

J. C. ROBERTS,	*Register.*
J. V. ADMIRE,	*Receiver.*

BEAVER LAND OFFICE.

—— ——	*Register.*
—— ——	*Receiver.*

COURT COMMISSIONERS.

THOMAS JENSON,	El Reno.
N. B. WASS,	El Reno.
A. T. ROSS,	Norman.
ALBERT RENNIE,	Noble.
T. B. SULLIVAN,	Alfred.

POST OFFICES IN THE OKLAHOMA TERRITORY.

(OFFICIAL.)

Post Offices.	*Post Masters.*
Alfred,	Ancil B. Wood.
Aridom,	John B. Chapman.
Britton,	David D. Dailey.
Burlington,	Michael D. McNett.
Choctaw City,	Miss Sarah A. Muzzy.
Cimarron City,	Christian E. Bearhs.
Clarkson,	Grant T. Johnson.
Chaddick,	Mr. Bean.
Clayton,	W. S. Rice.
Columbia,	Samuel Dial.
Crescent,	John Warrenburg.
Chetalat,	J. M. Faries.
Dover,	John G. Chapin.
Downs,	Frank Rictor.
Eda,	Lewis B. Cooper.
Edmond,	Franklin L. Greene.
Elm,	Felix G. Ott.
El Reno,	Reuben R. Hickox.
Frisco,	David M. Deupree.
Guthrie,	Dennis T. Flynn.
Hennessey,	Guy R. Gillett.
Idelah,	James H. Concannon.
Ingalls,	Robert F. McMurtry.
Kingfisher,	Jacob W. Mills.
Lexington,	Henry W. Stuart.
Liberty,	N. G. Barret.
Lincoln,	John J. Young.
Miller,	Samuel H. Miller.
Moore,	Albert M. Petite.
Marshall,	Sylvan T. Rice.
Noble,	Albert Rennie.
Norman,	Daniel W. Marquart.
Oklahoma,	George A. Beidler.
Orlando,	George H. Dodson.
Perkins,	Jesse E. Stanton.
Rock Island,	David C. Bethel.
Seward,	Allen W. Howe.
Springvale,	John S. Darst.

IN THE PUBLIC LAND STRIP.

Alpine,	Louis F. Shaw.
Beaver,	Joseph C. Hodge.
Benton,	Benjamin D. Fowler.
Bluegrass,	Horace N. French.
Boyd,	John H. Rosevelt.
Buffalo,	Norman Buckhorst.
Clear Lake,	Mrs. Ida F. Dunlop.
Dial,	Miss Lettie A. Dial.
Elmwood,	Noah C. McCown.
Florence (late Carrizo),	George W. Hubbard.
Fulton,	Elmer Tompkins.
Garland,	Elihu Moore.
Gate City,	Jesse M. Grasham.
Grand Valley,	Addison J. Silverwood.
Hardesty,	William A. Sullivan.
Ivanhoe,	Melville L. Cox.
Kokoma,	John A. Wiseman.
Lansing,	William W. Clark.
Lavarock,	George Eubank.
Lockwood,	Chancy D. Fisk.
Logan,	William Reynolds.
Meridian,	John Walburn.
Mineral City,	Sebastian S. Baker.
Mitchell,	James W. Mitchell.
Optima,	William H. Miller.
Paladora,	William A. Espy.
Peoria,	Miss Jesten Hickman.
Riverside,	Miss Myrtle B. McCool.
Rothwell,	James S. Hart.

IN THE CHEROKEE OUTLET, INDIAN TERRITORY.

Fort Supply,	John M. Ferguson.
Waynoka,	—— ——

MAYORS OF CITIES.

Orlando,	H. C. Fancher.
Burlington,	S. S. Leonard.
Seward,	Doct. Comstock.
Perkins,	J. F. Lockett.
Norman,	D. W. Marquart.
Alfred,	Zach. Mulhall.
Lexington,	—— Abernathy.
Noble,	S. P. Cornell.
Ingalls,	B. W. Becil.
Reno City,	John Dobson.
El Reno,	G. Longendyke.
Union,	C. D. Harston.

LAWYERS.

Purcell,	Jennings & Sharp.
Burlington,	George E. Clayton.
Reno City,	E. E. Wilson.
Oklahoma City,	Hamner & Adams.
“ “	B. N. Woodson.
“ “	Sydney Denham.
“ “	Ed. Stone.
“ “	E. J. Stewart.
Guthrie,	G. F. Herriott.
Lavarock,	A. C. Eubank.
Alfred,	John S. Calhoun.
Lexington,	Amos Green.
“	A. Hutchins.
Noble,	J. D. Grigsby.
Stillwater,	Frank J. Wykoff.
“	N. N. Block.
Ingalls,	Harvey Rhodes.
Reno City,	E. J. Simpson.
“ “	Col. Severy.
Frisco,	C. J. Coffman.
“	J. T. Godfrey.
Oklahoma City,	S. Armstrong.
“ “	G. W. Adams.
“ “	L. B. Barlow.
“ “	J. H. Beatty.
“ “	J. L. Brown.
“ “	L. L. Bell.
“ “	John Burton.
“ “	B. Caldwell.
“ “	Sidney Clark.
“ “	R. R. Countryman.
“ “	Sidney Denham.
“ “	C. H. Eagan.

Oklahoma City,	W. S. Fuld.
" "	Ledru Guthrie.
" "	C. A. Gabraith.
" "	D. A. Harvey.
" "	Hy. H. Howard.
" "	A. B. Hammer.
" "	J. W. Johnson.
" "	J. E. Jones.
" "	L. M. Keys.
" "	J. N. Harvey.
" "	—— Leach.
" "	D. C. Lewis.
" "	G. W. Mc Clelland.
" "	D. B. Madden.
" "	Jas. Milton.
" "	H. B. Mitchell.
" "	W. A. Monroe.
" "	Frank McMasters.
" "	D. F. MacMartin.
" "	L. G. Pittman.
" "	L. P. Ross.
" "	W. W. Sanford.
" "	S. H. Scott.
" "	A. C. Scott.
" "	E. J. Stewart.
" "	S. A. Steward.
" "	S. M. Sutliff.
" "	W. W. Witten.
" "	Huger Wilkenson.
" "	B. N. Woodson.
" "	—— Richardson.
" "	J. H. Woods.
" "	H. R. Winn.
" "	J. L. Vanderworker.

HISTORY.

Oklahoma, in the language of the Chickasaw Indians, signifies "beautiful land." It was the name given by the Indians to a tract of country containing almost 2,000,000 acres and situated nearly in the center of Indian Territory. Some of the land is poor, but the larger part of it is the richest and most productive known in the world. It is also believed to contain valuable mineral deposits. It was originally a part of the Louisiana purchase and was included in the tract assigned by Congress, in 1830, to be divided up among various Indian tribes, to be theirs forever. Oklahoma, under this act of Congress, became the property of the Creek tribe and remained in their undisputed possession till 1856. In that year they made a treaty with the Seminoles, by which the two tribes held the country jointly till 1866, whenthe two consented to a sale of it to the United States for about fifteen cents an acre. A few months after this sale was completed a bill was rushed through Congress granting to the Atlantic & Pacific Railway a right-of-way through the Territory thus purchased, together with a grant of alternate sections of land for forty miles on each side of the railway. It was then generally believed that the purchase of Oklahoma had been advocated and accomplished with a view to giving the railway company this valuable grant. The company made a survey for the proposed line but never built it. It was decided by the courts that the land was not yet open to settlement, and would not be so thrown open except by proclamation from the President of the United States. It was expressly provided in the railway charter that it should be forfeited if the officials of the company in any way aided or abetted any movement for the opening of Indian Territory for settlement. If they built the road without settlers it would be a losing venture; if they attempted to get settlers along its line they would lose their charter. What should be done under these conditions?

Here we get a glimpse of what is generally believed to be the first cause of the boomers. They were men hired secretly by the railway company to break into Oklahoma in defiance of the United States Government and found settlements. This is denied by the railway authorities and can of course never be proved. There were undoubtedly other causes, the chief of which was the richness of the coveted lands and the desire of men of roving and adventurous spirit to get possession of them. The first band of boomers started under the leadership of an Indiana adventurer named Payne, who, having served through the war and got into politics, first heard of the Oklahoma country while serving as assistant doorkeeper in the House of Representatives at Washington. He went to Kansas in the fall of 1878, and began to harangue the people on the subject of invasion and possession. In company with other men of similar characteristics he organized a land company with an alleged capital of $2,000,000 called the "Oklahoma Town Company," and sold shares at $5 each. They also organized the "Southwest Colony Company," with a capital of $1,000,000 and sold shares in that at $2 each. After vigorous agitating they succeeded in getting together in the spring of 1880 about twenty-five men who were willing to begin the invasion.

After dodging the United States troops for several days they at last reached a suitable point in Oklahoma and chose a site for their town. They called it "Ewing," after Gen. Thomas Ewing, of Ohio, gave it an area of six square miles, built a log-house, and began to cut down trees and lay out town lots. They got on famously for about three weeks when a squad of United States troops, consisting of twelve men and accompanied by twelve Indian scouts, appeared and took away the entire population to prison. After two weeks' imprisonment Payne and his companions were discharged. They found themselves heroes, for the West looked upon them as sufferers from the despotic power of the Government. Payne soon discovered that he could now obtain all the followers he desired, and in the fall of 1880 he had a new expedition of 200 men in camp on the Kansas border eager for a fresh invasion. The troops were watching them, however, and there were thus organized two hostile camps near the border, which were the beginnings of the remarkable boomer movements, which have so frequently disturbed the border.

From the autumn of 1880 till that of 1884 there were invasions at pretty regular intervals. Squads of boomers would slip by the troops, invade Oklahoma, locate lands, be discovered by the troops, and ejected, only to start again. The largest expedition ever organized by Payne was in May, 1884, when he got into Oklahoma with a colony of 600 men, women and children, and founded the town of Rock Falls. He opened a "drug store," with a license to sell liquor, had a provision store, a school house, a printing office, and a newspaper, and established regular religious services, there being a parson among the colonists. This colony was so large that it required time to get together a sufficient expelling force, and it was not till August following that Payne was again arrested and his town broken up. He was kept in prison only a short time, and was busily at work organizing a fresh expedition when death overtook him, instantaneously, at the breakfast table, at the city of Wellington, in Southern Kansas.

Other leaders followed him and the business of invading Oklahoma had gone on with constantly increasing force, until the spring of 1889, when there was upon the border line a series of towns, containing at least 10,000 "boomers," all waiting for the time to come when they could rush in and take possession of the coveted land.

But the uniform rulings of the federal courts, and the inflexible policy of the executive government at Washington, in maintaining the military barrier, effectually prevented anything like permanent occupancy, until the month of April, 1889. (See the first pages of this volume.)

At the date of the President's proclamation, March 23, 1889, which fixed the hour of destiny at 12 o'clock noon, of the 22nd of the following April, there could not have been seen in any part of the world so curious a collection of embryo settlements as stretched along the border lines of the new Territory, waiting for the 22nd of April to arrive. They had regular names, like Beaver City and Purcell, with hotels and stores. Some of them had a population of 1,500, and at one store the gross receipts in a single day are said to have reached $500. Yet there was scarcely a permanent building in any of them. For the most part the boomers were living in dug-outs or sod houses, with some rough wooden shanties and many tents. Yet business was carried on regularly, and the 10,000 boomers who were thus waiting on the threshold of the promised land were clad more like Indians than civilized people. In addition to these 10,000 there were many thousands more in the regular towns and settlements near the border, and it was estimated that the new Territory would have a population of 100,000 within few months. The rush was ominous for the remainder of the Indian Territory, for the same greedy eyes were upon that as have been fastened so eagerly upon the portion about to be gained.

THE OPENING.

GUTHRIE, present capital of the Territory, was then a station on the Santa Fé Railroad, containing one building, occupied by the company's agent. In a single day it blossomed into a bustling metropolis of 10,000 excited people. A few days before it had been designated as the site of a Government land office, and was the center of attraction to the eager multitude; and no where in history since the founding of Ancient Carthage by the Phœnician Queen is found recorded more remarkable or dramatic scenes than were enacted at that lone solitude on April 22, 1889. They were witnessed by Hon. John Guthrie, district judge, of Topeka, in whose honor the station had been named by the officials of the railroad company; although he was not an active participant in the wild strife. An observing correspondent transmitted to one of the great newspapers of the country the following graphic but not exaggerated discription of the occurences of the grand opening, at that principal point; similar scenes having transpired at Oklahoma City, and Kingfisher:

"Oklahoma is open! The trials and struggles and sacrifices of years are partially rewarded, but the events of to-day, with those of the days, weeks and months to follow, will prove how far supply is below demand, and necessitate further concessions, to avert disorder, bloodshed and other conditions, but little short of anarchy. The history of this one day will forever be memorable in frontier annals, and will leave behind a heritage of litigation which will be fruitful to land sharks and claim attorneys, but be destructive to the claims of poor and honest settlers.

"The Atchison, Topeka & Santa Fe railroad began running its sectional trains out of Kansas City last night, and picking up cars at almost every station along the route. Hundreds of people were waiting at every depot, and if the cars, all of which were full before the border line was reached, could have been coupled, they would have a train miles in length. The crowds were composed of speculators, adventurers, sightseers, thieves, gamblers and a sprinkling of the *demi monde*. The farming element was not largely represented, as all of the homesteaders have gone on before. There were men in the cars from every great city and important point in the country, and there was not a State or Territory which did not have its representatives.

"Those who filled all of the seats, occupied all of the standing room in the aisles and filled up the space between the coaches, hanging on the iron banisters and girders with a grip born of despair and determination. The newspaper coach was the first out of Arkansas City. It contained representatives of all the leading newspapers in the country, who are compelled to forego room and comfort for the good of the cause. The conductors were vigilant in the collections of fares, but it is certain that a great many dead-heads went through to the promised land in the rush and hurry and roar of the boomer campaign. There was but little sight seeing indulged in, as the crowd did not care to look at anything until it got to Oklahoma, like the emigrant at Castle Garden, who refused to pick up a silver dollar because he expected to find gold in the street in the next block.

"At Arkansas City there were over seventy-five coaches tracked in the yards awaiting the rush. All of these were lowered into the yards some distance below the depot. The crowd began gathering at the platform two hours before daylight, and long before the first faint streak of the dawn of the fateful day the city was awake and stirring. The streets presented a live, picturesque appearance. After the sun rose crowds were rushing toward the center of action from all parts of the city. The hotels emptied the hundreds into the streets; the cot houses contributed hundreds more out of the hospitable homes of the city, nearly all of which have entertained guests during the past week. Some long strings of men carrying grips, bundles, knapsacks and parcels of every possible and impossible description. Hundreds of boomers and rustlers in their impatience to get aboard, rushed down *en masse* to the yards and attempted to force an entrance into the cars, all of which were securely locked. The excitement may be judged from the fact that a large number of coach windows were broken out by people who were anxious to secure seats. A strong guard of railroad men was detailed to protect the company's property, and they had a contract of unusual dimensions on their hands.

"Every man there wanted to be fifteen minutes ahead of everybody else. The first section made up consisted of nine coaches, the newspaper coach and one caboose. It pulled out at 8:45.

"At the last station outside of the Oklahoma Territory there was a great crowd of boomers who had forsaken their teams and hoped to get in quicker by rail. There being no room inside, they climed to the top of the coaches and the entire train from one end to the other was roofed with them. In this way the line was reached about five minutes after 12 o'clock.

"The ride of Paul Revere dwindles into obscurity besides the feats of horsemanship performed in Oklahoma to-day. Rides of fifteen or twenty miles were made in an incredibly short space of time by old boomers familiar with the country, and who knew where desirable lands were located. The train stopped at the frontier post. The white tents of the soldiers and the officers' tents surrounded by the national colors were a gratifying evidence of a power sufficient to maintain order. Troop D, of the Fifth Regiment of cavalry, United States army, was quartered there, and the officers said that at the sound of the bugle at high noon there had been a movement among the boomers camped along the border which extended across the entire frontier line and that the riding had been fast and furious ever since, some of the prospectors running to Guthrie to file their entries, and others going to locate on the land and secure a prior right to possession by actual occupancy.

"It was twenty minutes after 12 when the first section of the great Atchison train reached the line, and its progress from that point on to Guthrie was not rapid enough for the rapid men who wanted to get there in a hurry before all the cream was skimmed off the milk. Nevertheless it lacked but a few minutes of being 1 o'clock when the train stopped at Guthrie. Before the train came to a stop it was seen that somebody was already there. The town in fact was populous with boomers.

"Tents were numerous on the eastern slope, and stakes were sticking up out of the ground like poles in a bean patch. Men could be seen rushing in the direction of the valuable spots, and the scene was as busy as it is possible to imagine. The profanity among the Arkansas City, Wichita, as well as those from the other points, and Kansas City speculators, was both loud and deep. When the second and third sections of the Atchison trains arrived and found everything cornered, the

AIR WAS BLUE FOR MILES AROUND

the metropolis. There was nothing to do, however, as every lot was protected by rifles and revolvers, and if the shooting began there was no telling where it might stop. The only recourse left to the disappointed men was to buy out such holders of lots as were willing to sell or run the risk of taking outside the legal limit. Both courses were adopted, and a good number of Guthrie City lots changed hands.

"No one who has never seen a Western town take form and shape can comprehend how quickly a full-rigged city with a double-deck boom can be put in running motion. Guthrie already has its Main Street, its Harrison Street, its Guthrie Avenue and its Oklahoma Avenue, and this morning it was a wilderness where the antelope sported and the jack rabbit flapped his ears in the sun. This afternoon at 4 o'clock

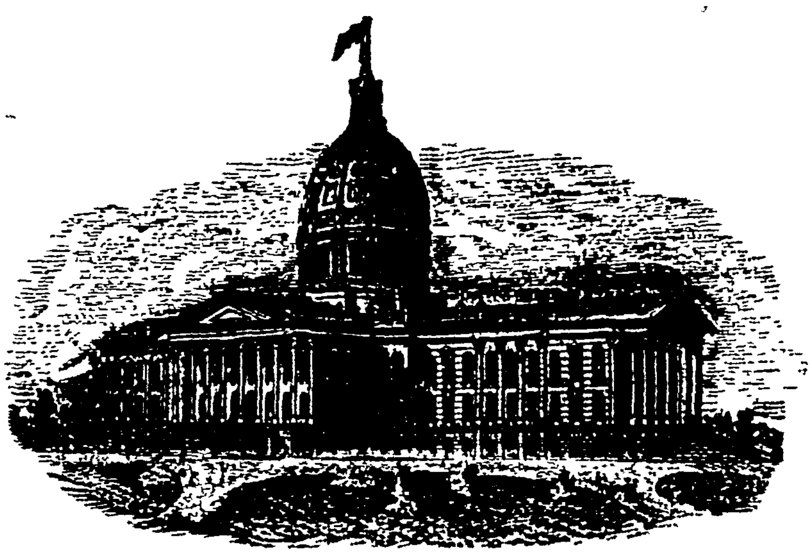
THE FIRST MUNICIPAL ELECTION OCCURRED.

"The election notice appeared to-day in the Oklahoma *Herald*, a daily paper, published at Guthrie on the first day of its existence. A council will be elected at the same time. Nearly 1,000 votes were polled, as there are about that many men in Guthrie with the intention of becoming citizens. The new city is flooded with business cards of all descriptions, representing every line of trade and business, every profession and every occupation imaginable. The scheme which resulted in the practical cornering of town lots to-day originated, as has been frequently indicated in this correspondence, with the Atchison, Topeka & Santa Fe, probably in combination with the syndicate who have been hard at work in Arkansas City. For a week or more past numbers of men have been going into the Territory as deputies, and under permission as railroad employes. The deputies were simply commissioned and not sworn, and their men were not burdened with official orders. They all did their work to-day and did it well. Officials in the Guthrie land office say that men appeared to spring out of the earth as one approached, and that it did not take fifteen minutes to occupy half the town sites.

"It is evident that Oklahoma is to be opened peaceably and without bloodshed. The crisis was passed to-day. The great number of her citizens are law abiding, and those who are not will be suppressed by the strong hand of frontier justice, aided by military authority under command of General Merritt, who has established his headquarters at Oklahoma City. There are now about 600 troops in the Territory, and they will be kept here until order is assured."

TOWN SITES.

OKLAHOMA CAPITAL-CITY



CAPITAL, $200,000,

TOWN SITES AND IMPROVEMENT CO.

(Authorized to establish and improve town sites, and build and operate roads and bridges, and locate Soldiers' homesteads on the public lands in Oklahoma and elsewhere.)

DIRECTORS.

John Guthrie, F. P. Baker, Byron Roberts, W. Allen Sells, Geo. W. Reed, J. C. Cooper,
J. B. Hibben, Sam'l Dolman, G. F. Miller.

OFFICERS.

President, F. P. Baker; Vice President, W. A. Sells, Treasurer, J. S. Collins;
Secretary, Le Grand Byington; Attorney, John Martin; Gen'l Agent, L. L. Turner.

No phase of the problem of permanent occupancy in Oklahoma has evolved more of perplexity and uncertainty, than the questions of town sites, and town lot ownership. Before the opening day, fifty "town companies" had a paper existence, whose agents were among the more active of the advance guard that had slipped into the territory in defiance of the inhibition contained in the proclamation. One, however, was law-abiding. The Oklahoma Capital City Town Site and Improvement Company, of Topeka, was founded upon the idea that, under the peculiar conditions existing in consequence of the crude legislation of Congress, town site entries could be *legally* made only through express permission, to be *directly granted* by the Secretary of the Interior and administered *in trust.* They accordingly selected a number of prospective "centers of population," and addressed to the Secrtary the following letter:

"Topeka, Kas., April 8, 1889.

"*To the Secretary of the Interior, Washington, D. C.:*

"Sir—By direction of the President of the Oklahoma Capital-City Town Sites and Improvement Company, I hand you herewith its formal application for your permission to locate and enter certain lands in the Guthrie and Kingfisher Districts, for town sites in the Indian Territory, '*in trust for the several uses and benefit of the inhabitants of said towns.*'

"Not feeling sure of the technically correct mode of procedure under the late law, and not knowing what regulations, if any, your department has made for giving effect to its provisions, duplicate applications of a like nature with the enclosed, will be presented to the Registers at Guthrie and Kingfisher, at 12 o'clock noon, April 22, 1889; unless this company shall have been advised that a direct order of your department has been received by them, authorizing these entries, or an *alternative* order from the President of the United States, for the *reservation* of these tracts, under section 2388, R. S., as asked for in the enclosed.

* * * * *

"Until further legislation by Congress, there can be no 'corporate authorities' of towns, or 'county judges,' with lawful authority to make entries in the Oklahoma country, under sections 2387 and 2388; and this strong company, as a *quasi* municipal body, with your sanction and under your direction, can so administer the trust, as to secure to the inhabitants 'the several uses and benefits' contemplated by Congress, until local 'legislative authority' shall come, to solve the complex problem growing out of the apparently conflicting acts of Congress, having reference to the subject. This seems the more desirable, because the *exclusive* occupancy required of the homestead claimant, necessarily excludes that class of entries from town-site uses. Our purpose and plan are, to peacefully settle the town-site question in Oklahoma, more in the interests of the 'inhabitants' than for the profit of our stockholders, all of whom are well known to the whole Kansas Congressional delegation, to whom you are respectfully referred.

"The president of the company also directs me to say, that your early acknowledgment of the receipt hereof will be esteemed a favor.

"Respectfuly, LE GRAND BYINGTON,
Secretary O. C.-C. T. S. & I. Co.

On the day following the company addressed to the Secretary and President the following alternative application, to wit:

"TOPEKA, KANSAS, April 8, 1889.

"*To the Hon. John W. Noble, Secretary of the Interior, Washington, D. C.:*

"DEAR SIR—The Oklahoma Capital-City Town Sites and Improvement Company, is an existing corporation in virtue of the laws of Kansas, with a capital stock of two hundred thousand dollars, and is empowered by its charter to locate, or buy, or lease, and manage, town sites on the public domain in the Indian Territory, in accordance with the provisions of the various acts of Congress relating thereto, '*in trust for the several uses and benefits of the inhabitants of said towns.*'

"The company is fully equipped for this work, and on the 1st of April, 1889, its board of directors, by resolution, ordered its executive officers to make to your department a formal application for permission to enter, as a *quasi* municipal body, the lands hereinafter mentioned, *in trust* for town-site purposes, and to the President, its alternative application for *reservation* of the same.

"In pursuance of the authority of the aforesaid resolutions, the 'Oklahoma Capital-City Town Sites and Improvement Company' hereby makes application to the honorable, the Secretary of the Interior, for his order, allowing entry by said company, at the minimum, of the tracts hereafter described, as town sites, in trust for the purposes aforesaid, and declares its intention to administer such trust in all things according to law and the regulations of the department, for the several uses and benefits of the occupants of said towns, until such time as the State or Territorial legislative authorities of Oklahoma, shall make 'regulations as to the disposal of said lands and the proceeds of sales.'

"If, from any cause, such entry cannot be lawfully allowed, then this company asks that this communication be treated and held as an application to the President of the United States for reservation and action, as contemplated by the second resolution of this company, above quoted.

"The said company presents herewith, as part of its application, its approved bond in the sum of fifty thousand dollars, conditioned for the faithful discharge of the trust, and makes it a part of this application.

"In view of the anomalous condition of the Oklahoma region, without organized government, and about to be overrun by a mass of eager land-seekers, whose scrambles will necessarily postpone and complicate the settlement of legal titles, there cannot be a question that the plan of this company is the best that can be devised, to meet the actual situation, and secure to *bona fide* residents of town sites the respective 'uses and benefits' contemplated by Congress, and to escape deadly feuds, that are imminent, over rival 'claims' of contending individuals.

"This company is impressed with a conviction that security and permanency of title is the prime factor in the growth of towns. The making of 'homestead claims' is incongruous at such 'centers of population,' and is wholly unsuited to town development, because of the delays, uncertainties, contests and relinquishments, incident thereto, as well as the requirement for 'cultivation,' all of which repel rather than invite an urban population. For these and other obvious reasons, this company (which is better equipped than any other in the country) can more satisfactorily handle, for the benefit of all parties, the patent title than any 'claimant' in the homestead class.

"In this connection, Mr. Secretary, we wish to say that, while this company has faithfully respected the governmental injunction and avoided all appearance of entry into or occupancy of the Oklahoma country in violation of the proclamation, and discouraged others from doing so, we are well advised that many less scrupulous, and, to a great extent, sham companies, without adequate power and of no responsibility, have been active in field operations down there, for three weeks past, in entering upon, occupying, selecting, surveying, platting and staking off ground for future towns, (all in the private interests of their projectors); and have been in unlawful combinations, with subordinates of railroad companies and government agencies, whose business connections secured them a present domicile in the Territory.

"Many of the points named in this application are railroad stations, and therefore fore-doomed "centers of population." The unlawful operations above alluded to have taken in most of these places; and it seems probable that conflicting applications will be presented to the department. If this should prove to be the case, this company respectfully insists, that its solid claims be not prejudiced by these unlawful efforts to forestall the action of the Land Department and to take snap judgments against law-abiding citizens, even if said proceedings are not to be regarded as barring the parties from the privilege of entry.

"Attached hereto is a list of the lands covered by this application.

"LE GRAND BYINGTON, *Secretary.* F. P. BAKER, *President.*"

ALTERNATIVE APPLICATION.

TOPEKA, KANSAS, April 9, 1889.

"*To the President of the United States, Washington, D. C.:*

"SIR—There is an absence of all legal power to create 'corporate authorities' or 'county judges' in the Oklahoma country, and no such officials can exist therein, for some time to come, to enter lands for town sites. Yet it is certain that many points on the lines of existing railroads and traffic will speedily become bustling 'centers of population,' within the meaning of the laws of Congress, creating strife that threatens to verge on violence if not crime. The claim of a homestead applicant is wholly incompatible with joint occupancy of a town site, and any attempt to found towns thereon will result in confusion and disorder of the most perplexing character. This being the actual situation, the 'Oklahoma Capital-City Town Sites and Improvement Company' have organized a strong corporation, as a *quasi* municipal body, under the laws of Kansas, with ample means and facilities, and with a special purpose to locate, plat and develop a number of towns on the public lands for 'the several uses and benefit of the inhabitants;' and are desirous of founding towns and cities at such selected points. Believing that the exigencies of the case as well as the peace of the Territory required and justified it, the company passed, on April 1, 1889, the following resolutions:

"*Resolved*, That the president of this company present to the Secretary of the Interior, its formal application and bond, for his permission, as soon as President Harrison's proclamation is in effect, to enter, as a *quasi* municipal body, for town sites, under sections 2387 and 2388 of the Revised Statues, the several half sections of land hereinafter described, in trust, for the uses and purposes therein mentioned, to be by this company administered under the laws of Congress, and the regulations of the Land Department, until such time as said sites and lands shall be subjected to 'legislative regulations,' to be enacted by 'Territorial or State authority;' the said application to be in effect, at or before 12 o'clock (noon) of April 22, 1889.

"*Resolved, Further*, That in the event of failure, from any cause, to obtain the permission of the Secretary of the Interior to make any of the entries aforesaid, this company shall apply to the President of the United States, on said April 22d, to *reserve* said lands for town site purposes, under sections 2380, 2381, 2382, etc., as undoubted prospective 'centers of population,' to be platted as town sites, by this company; and in case said last application is successful, and said reservations made, this company pledges itself, and will give bond to the acceptance of the Government, to plat said lands and town sites, and pay the expense of such platting, in the first instance, and to administer said lands in accord with the laws of Congress, and the regulations of the Land Department, in respect thereto, 'for the uses and benefits of the inhabitants thereof.'

"Under these resolutions, the company, as a *quasi* municipal body, has already applied to the Secretary of the Interior for his permission to enter several half sections for town sites, *in trust*, under sections 2387 and 2388, Revised Statutes, and forwarded therewith an approved bond, in the sum of fifty thousand dollars, conditioned to faithfully execute the trust. Not feeling entirely sure of our ground in this, on a question of the construction of a crude law under anomalous conditions, we so framed the application that if insurmountable obstacles to the proposed trust be found to exist in the mind of the Secretary, then the said company requested him to treat the application as a *petition to the President direct, for reservation,* of the lands, for town plats, under sections 2380, 2381, 2382, etc.

"Lest this alternative proposition should be overlooked, or too long delayed, in the pressure of business, this company now hereby expressly states to the President that it is 'desirous of founding towns and cities' for the benefit of the inhabitants, on public lands in Oklahoma, at the several points in our petition to the Secretary, named, and we believe the peace and prosperity of the Territory are to a great extent involved in the successful prosecution of our design. Reference is prayed to our petition and exhibits now in the office of the Secretary of the Interior as parts hereof; and as an alternative measure this company asks the President to *reserve* the tracts of public land embraced in the list thereunto attached, before the impending scramble of April 22, 1889; and that they may be declared subject to private entry, for town site purposes, and platted by this company, at its own cost, in the first instance, so that this company may have opportunity to secure title, and develop the same under the direction of the Interior Department. If this, our request, as an alternative to the pending application, be granted, this company will give bond in the sum of fifty thousand dollars, or such other sum as may be required, conditioned to faithfully perform the trust according to law, and the regulations of the Land Department.

"By order of the Board of Directors of the Oklahoma Capital-City Town Sites and Improvement Company. (Signed)

[SEAL.] F. P. BAKER, *President.*"

"Attest: LE GRAND BYINGTON, *Secretary.*

On the 11th of April, 1889, the company, on the advice of counsel at Washington, adopted the following alternative application to the President direct, and to the Secretary of the Interior, to wit:

"OFFICE OF THE OKLAHOMA CAPITAL-CITY
TOWN SITES AND IMPROVEMENT COMPANY.
TOPEKA, KANSAS, April 11, 1889.

"*To the Secretary of the Interior, Washington, D. C.:*

"SIR—In view of the ascertained plottings, intrigues and combinations of irresponsible parties to seize upon town-site locations which threaten endless confusion, litigation, strife, perjury and crime in respect thereto, this law-abiding company presents to the President and to your department direct its second alternative application, in the following proposition supplemental to our applications heretofore made, namely:

"*First.* That reservation from homestead entry be made of the half sections of land described in our pending application for the towns therein named.

"*Second.* That this company will give its bond in the sum of one hundred thousand dollars to the acceptance of the department, conditioned that immediately after there shall be found a sufficient number of *bona fide* inhabitants of each of said towns, this company will procure organization therein of *de facto* 'corporate authority,' who will enter the land on which said town is located under section 2387, R. S.; said *de facto* 'corporate authority' to be organized and conducted as nearly as possible on the model prescribed by the law of Kansas for cities of the third class; and further conditioned that when said lands are so entered in trust, with the consent of the Interior Department, said trust will be administered by said *de facto* 'corporate authority' with the aid of this company under the direct supervision of the Washington Government, and subject to the control of the United States courts for the districts of Kansas and the Indian Territory, both having jurisdiction, for the 'uses and benefits of the inhabitants of said towns.'"

"By order of the Board of Directors. F. P. BAKER, *President.*"

"LE GRAND BYINGTON, *Secretary.*

The foregoing formal applications were accompanied by a bond, in the sum of one hundred thousand dollars, approved and certified by the United States District Judge and Marshal for the District of Kansas, and by the Post Master at Topeka, conditioned to faithfully discharge the trust.

The President responded as follows:

"EXECUTIVE MANSION, WASHINGTON, April 12, 1889.

"*F. P. Baker, Esq., President, Etc., Topeka, Kansas:*

DEAR SIR—The President directs me to acknowledge the receipt of your letter of the 9th instant, and to inform you that it has been referred to the Secretary of the Interior. "Very respectfully yours,

ELIJAH W. HALFORD,
Private Secretary."

On the 21st of April, 1889, the matter was brought to an unsuccessful close, on receipt of the following, from the Secretary of the Interior, transmitted by the commissioner of the general land office, to wit:

"GENERAL LAND OFFICE, WASHINGTON, D. C., April 20, 1889.

"*Le Grand Byington, Esq., Secretary O. C.-C. T. S. & I. Co., Topeka, Kansas:*

"SIR—Referring to your communication of the 8th instant, addressed to the Hon. Secretary of the Interior, enclosing applications of Oklahoma Capital-City, Townsite and Improvement Company, for seventeen town sites in Oklahoma, the receipt of which I acknowledged on the 13th instant, I now enclose herewith a copy of a letter from the Secretary to this office of the 19th instant, which will advise you of his decision in the matter.

Respectfully, S. M. STOCKSLAGER,
Commissioner."

"DEPARTMENT OF THE INTERIOR, WASHINGTON, April 19, 1889.

"*The Commissioner of the General Land Office:*

"SIR—I am in receipt of your communication of the 15th instant, relative to the application of the Oklahoma Capital-City Town Site and Improvement Company, asking permission to locate and enter certain lands in Guthrie and Kingfisher land districts, for town sites in the Indian Territory—seventeen in number—said application having been referred by the department to your office on the 11th instant. I concur in the views expressed by you in your said communication, that there is no authority in the department to grant the application of the Oklahoma Capital-City Town Site and Improvement Company to enter lands, as now presented; and I am also of the opinion, that the provisions of the act of March 2, 1889, providing for entries of lands for town sites, under sections 2387 and 2388 of the Revised Statutes, do not apply to corporations of this character.

"Although the President might have the power to reserve lands for town site purposes under sec. 2380 of the Revised Statutes, such reservation could not be made for the benefit of a corporation of this character but would be disposed of in the manner now provided by law.

"Very respectfully, JOHN W. NOBLE, *Secretary*."

More than a year has since elapsed, with "confusion worse confounded," as the prevailing condition of town-lot controversies in Oklahoma, foreshadowing endless litigation in the future.

The Town Site Law of Kansas, (anterior, page 40), has been several times construed by the Supreme Court of that State, in the following reported decisions:

In *Winfield Town Co. vs. Maris*, 11 Kas. 128, they hold: That "the act of Congress creates the right of occupancy, and determines who shall be entitled thereto; and that any rules which attempt to direct the execution of the trust, contrary thereto, are inoperative." Actual occupancy is the test of right.

In *Rathbone vs. Sterling*, 25 Kas. 444, they hold: That "when a party has been in the continued occupancy of a lot, the award thereof by the commissioners, to a third party, cannot deprive him of his right thereto. Such award not being a judicial act does not conclude the right of the occupant."

In *Doster vs. Sterling*, 33 Kas. 381, they hold: That "the commissioners are required to levy a specific tax on each lot occupied, with the improvements thereon, *according to value*, and if the tax is uniform, on each lot, regardless of value, with the improvements, the proceeding is so irregular as to avoid a deed based thereon."

* * * * * * * *

A correspondent at Purcell, on the southern border, said the Santa Fe run a number of trains from that place, intended to reach Guthrie at noon, and that an order was issued to bar all commercial messages from the single wire between Purcell and Kansas City until next week, and added. "Another wire is being strung. Press messages from this place now go by way of Texas.

"Five hundred dollars was yesterday paid for a fleet horse, wherewith to reach a claim proposed to be taken by a town site company, which expects to build a city that will rival Purcell. Many fleet horses have been brought from Texas and Kansas.

"There is as much struggling for town sites as for sections. Thirty-two town site companies will go to Guthrie, half that number to Oklahoma City, and twenty to Kingfisher, while there are applicants for sites on almost every section. This makes the average settler swear. Trouble among town site companies promises to be as dangerous as among claim hunters. Animosity is brewing between the Northern and Southern people."

PROPOSED TEMPORARY GOVERNMENT.

Rumors of assassinations and rioting filled the air, and burthened the columns of the daily newspapers. About the last of April, a proposal for the inauguration of a provisional government was published, and the Secretary of the Interior was wired that, "Unless pandemonium was to reign for years in the Indian Territory, the department should *settle*, in some way, a definite policy on the town site question."

The following was the proposal for temporary government, to originate with the people; but it was never adopted, because of the jealousies of rival town organizations:

" *To the People of Oklahoma.*

"The Federal Government having precipitated a great mass of Anglo-Saxon humanity into the Indian Territory, and left them there under its military domination, without semblance of civil authority, the said people are thereby compelled to fall back upon their original inherent right of self-government, as declared in the Declaration of Independence.

"Inasmuch as the Oklahoma Capital-City Town Site and Improvement Company, of Topeka, expect to take a prominent part in the transformation of the country, they will propose to its inhabitants, thus left to shift for themselves, the following

"PLAN OF PROVISIONAL GOVERNMENT, NAMELY:

"That on the 22d of May, 1889, a mass and delegate convention of said inhabitants be held at Guthrie to carry out the following program:

"First—To divide the Territory as defined in the presidential proclamation into four counties, to be known respectively as Weaver, Couch, Springer and Perkins counties, with the following boundaries:

"Weaver County to embrace all north of the Congressional townships numbered 14, and east of the range No. 4—county seat, Guthrie.

"Couch County, to embrace all south of Weaver County, and east of said range 4—county seat, Oklahoma City.

"Springer County to embrace all north of the townships numbered 14, and west of range No. 3—county seat, Cooper.

"Perkins County to embrace all south of Springer County and west of range 3—county seat, Sells.

"Second—That a county judge and three county commissioners be appointed by the people there assembled, for each of said counties, to hold until Congress shall establish Territorial government.

"Third—That there be also appointed in the same manner a provisional executive council of four persons, one for each county, resident therein, to hold as aforesaid.

"Fourth—That said county commissioners be invested with jurisdiction as defined in the laws of Kansas, so far as applicable, in respect to the following matters, to wit: highways, bridges, ferries, transfers, licenses (except to traffic in intoxicating drinks), revenues, county buildings, the poor, the insane and incompetents, county and township elections, and with power to appoint township officers.

"Fifth—That said county judges be invested with jurisdiction, as defined by the laws of Kansas, in respect to the following matters, to wit: probate and settlement of estates of deceased persons, marriages, schools and school lands, town sites, and controversies between citizens, where the amount in dispute is more than one hundred dollars, and appeals from justices of the peace.

"Sixth—That the executive council shall have jurisdiction of all matters affecting the whole Territory, including publication of all laws; and shall provide for the election of a delegate to represent Oklahoma in the House of Representatives of the fifty-first Congress.

"Seventh—That said *defacto* government shall report their general organization and proceedings to the United States Congress for ratification or disapproval, in whole or in part, at its first ensuing session, and shall continue until the same is rejected or superceded by action of Congress.

"Eighth—That all public expenpitures under said *defacto* government, shall be reported to Congress, with a memorial for the payment of the same out of the National Treasury. F. P. BAKER, *President*."

[SEAL.] "LE GRAND BYINGTON, *Secretary*."

COUNTY BOUNDARIES.

On the 24th of May, 1890, Gov. Steele, as his first official act, defined the boundaries of the counties of Oklahoma, named in the organic act of congress, as first, second, third, etc., as follows:

The *first* county is bounded north by the south line of the Cherokee outlet; east by the range line between ranges one and two west, until it strikes the Cimarron River; thence down the river to the Indian meridian, thence south, with the meridian line, to the line between townships 14 and 15; thence west with said line to the southwest corner of township 15, range 5; thence north to the northwest corner of said township; thence east to the southeast corner of section 32, township 16, range 4; thence north with section lines to the Cherokee outlet. Contents, 614 square miles; county seat, *Guthrie*.

The *second* county is bounded north by the first county; east by the Territorial line, until it strikes the northeast corner of section 25, township 11, range 1 west; thence west, with section lines, to the range line between ranges 4 and 5; thence north with range line, to the south line of the first county. Contents, 528 square miles; county seat, *Oklahoma City*.

The *third* county is bounded north by the second county; east by the territorial line; south and west by the Canadian River and the west line of range 4. Contents, 453 square miles; county seat, *Norman*.

The *fourth* county is bounded north by the fifth county, any by township 15, range 5; east by said township and by the range line between ranges 4 and 5; south by the Canadian River; and west by the west line of the Territory, as fixed by the President's proclamation of March 23, 1889; (98th meridian). Contents, 515 square miles; county seat, *El Reno.*

The *fifth* county is bounded north by the Cherokee outlet; east by the first county; south by the township line between townships 15 and 16; and west by the west line of the Territory, as declared by the aforesaid proclamation. Contents, 541 square miles; county seat, *Kingfisher.*

The *sixth* county is the "Public Land Strip," lying wholly west of the 100th meridian of west longitude. County seat, *Beaver.*

The *seventh* county is bounded north by the Cherokee outlet; east by the range line between ranges and 5 *east*; south by the Cimarron River; west by the range line between ranges 1 and 2 *west.* Contents, 324 square miles; county seat, *Stillwater.*

Excepting the two *horns*, northeast and southeast, and the "Public Land Strip," these boundaries very nearly coincide with those proposed a year ago, in the scheme of provisional government, recommended by the Capital City Town Site Company, but not then accepted by the parties in interest. And they are to remain until changed by action of the territorial legislature, (see page 11, anterior.)

THE OKLAHOMA MANUAL

OF

Legal Blank Forms.

BEING A COLLECTION OF THE MOST APPROVED SHORT FORMS, FOR CONVEYANCING, EXECUTIVE, JUDICIAL, ELECTION, PROBATE, MUNICIPAL,
AND CONTRACT BLANKS AND OFFICE BOOKS;
ADAPTED TO THE EXCEPTIONAL
CONDITION AND PRESENT NEEDS OF

Oklahoma Territory,

AND FOR USE THEREIN, BY LAWYERS, PUBLIC OFFICERS, AND PEOPLE.

PREPARED BY AN EXPERT, UPON AUTHORITY.

PRINTED BY PERMISSION AND SOLD IN QUANTITY, BY THE HALL & O'DONALD LITHO. CO.,
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LEGAL BLANK FORMS.

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TERRITORIAL.

(Application for Requisition.)

To be made in duplicate; (in Ohio, in triplicate).

To George W. Steele, Governor of the Territory of Oklahoma: I respectfully ask that you issue a requisition on the Governor of ——— for the rendition of ———, who stands charged by ——— pending in the ——— Court, within and for the ——— County of said Territory, with the crime of ———, committed in ——— County, but who has since the commission of said offense, and before an arrest could be made upon process issued by said court, and with a view of avoiding the same, fled from justice of the said Territory, and is now, as your petitioner verily believes, in the County of ——— and State of ———, and the grounds for such belief are as follows: ———. The ends of justice, in my opinion, require that he be brought back to this Territory for trial. I herewith present a duly certified copy of the said pending ———. In my opinion the facts stated in said ——— are true, and I believe that the prosecution of said ——— would result in his conviction of the crime charged. I nominate ———, of ——— County, as a proper person to be appointed and commissioned by you as the agent of the Territory of Oklahoma to receive the said fugitive, and bring him to this Territory, and deliver him into the custody of the proper officer of said county. I also certify that ——— has no private interest in the proposed arrest. I further certify that I have examined into the case, and am satisfied that a crime has been committed, and that the person charged is the guilty person.

——— ———,

Dated at ———, ———, 189—. Attorney of ——— County.

TERRITORY OF OKLAHOMA, ——— COUNTY, SS.

The undersigned, ———, being duly sworn, deposes and says that the within named ———, charged with the crime of ———, is a fugitive from justice, and that this application is made in good faith for the punishment of crime, and not for the purpose of collecting a debt, or pecuniary mulct, or of recovering the alleged fugitive to a foreign jurisdiction, with a view to there serve him with civil process, and that this affiant has actual knowledge of the facts constituting the offence, which are as follows: ———. ——— ———

Subscribed and sworn to by ———, before me, this — day of ———, 189—. ——— ———

(Extradition—Appointment of Agent.)

UNITED STATES OF AMERICA, } ss. *The Governor of said Territory,*
THE TERRITORY OF OKLAHOMA, }

To all to whom these presents shall come, greeting: Whereas, ——— stand— charged, in the ——— County, in this Territory, with the crime of

———, and it has been represented to me that –he— ha— fled from the justice of this Territory, and taken refuge in the State of ———; and whereas, agreeably to the Constitution and laws of the United States, I have made application to his excellency, the Governor of said State of ———, for the surrender of said ———, fugitive– from justice; and have, also, in pursuance of the authority vested in me by law, appointed (and by these presents do appoint) ———, agent on the part of this Territory, to receive the said ——— from the constituted authorities of the said State of ———, in accordance with such application, and bring ——— into this Territory, to be dealt with as directed by law: These are, therefore, to request and require all persons to peaceably permit the said ———, agent as aforesaid, to receive and secure the said ——— and bring ——— unmolested into this Territory, and to render all lawful and necessary assistance in the premises, and lawfully behaving. No expenses will be paid by this Territory.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the Territory of Oklahoma. Done at ———, this — day of ——, 189—. [SEAL.] —— ——, Governor.

By the Governor: —— ——, Secretary.

(Executive Warrant for Arrest—on Requisition from Governor.)

UNITED STATES OF AMERICA, TERRITORY OF OKLAHOMA.

To the Marshal of said Territory: Whereas, demand has been made by the Governor of the State of ——— upon the Governor of the Territory of Oklahoma, for the arrest and delivery to the authorities of the said State of ———, of ———, alleged fugitive– from justice from said State; and whereas, the said Governor of ———, aforesaid, has produced a copy of an ——— in the ——— court of the County of ———, in the said State of ———, in and by which ———, the said ———, stand– charged with having committed, in the County of ———, aforesaid, the crime of ———. And whereas, the said ———, is certified by the Governor of said State of ——— as authentic, and the said demand and copy of said ——— are now on file in the executive office of said Territory. Now, therefore, I, George W. Steele, Governor of the said Territory, by virtue of the authority in me vested by act of Congress, do hereby command you to arrest and deliver the said fugitive aforesaid into the custody of ———, the agent of the State of ———, duly commissioned by the Governor thereof to receive said fugitive– And I further command all persons within your jurisdiction, to whom these presents may be shown, to aid and assist in the arrest of the fugitive– aforesaid, and the execution of this warrant. Of this writ, and your proceedings thereon, you will make due return to this office.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of the Territory of Oklahoma. Done at ———, this — day of ——, 189—. —— —— Governor.

By the Governor: —— ——, Secretary.

(Petition for Notary Public.)

To Hon. George W. Steele, Governor of Oklahoma Territory: SIR—The undersigned, citizens and property holders of .... County, Territory of Oklahoma, respectfully make our petition, for the appointment of .... to the office of notary public for said county. And we certify hereby, that he is a citizen of the United States, over twenty-one years old, of good moral character, a resident of said county, and is well qualified for the discharge of the duties of said office.

NOTE.—The law requires twenty-five signatures.

(Notary Bond.)

Know all men by these presents: That we, ..., as principal, and ...., both freeholders, as sureties, all of .... County, and Territory of Oklahoma, are held and firmly bound to the said Territory of Oklahoma, in the sum of two thousand dollars, for the payment of which we bind ourselves, our heirs, executors and administrators. Sealed with our seals, and dated this .. day of ...., A. D. 189.. The condition of the above obligation is such that, whereas, the above-bounden .... was, on the .. day of...., A. D. 189.., duly commissioned by the Governor of the Territory of Oklahoma, as notary public, in and for .... County, in said Territory. Now, therefore, if the said .... shall faithfully perform the duties of his said office, then this obligation shall be void; otherwise to remain in full force. .... [SEAL.]

Approved: .... [SEAL.]

........, County Clerk. .... [SEAL.]

N. B.—Affix your official seal, and signature as notary public, to this bond. ...., Notary Public.

TERRITORY OF OKLAHOMA, ... COUNTY, SS.

I do solemnly swear that I will support the Constitution and Laws of the United States and the Laws of Oklahoma Territory, and faithfully discharge and impartially perform the duties of the office of notary public, in said county. ....

Subscribed and sworn to before me, this .. day of ...., A.D. 189..

....

TERRITORY OF OKLAHOMA, ... COUNTY, SS.

We, ..., the sureties on this bond, on oath say, we are resident property holders of said county, and each of us is worth at least the sum of $2,000 over and above all debts and liabilities by us owing respectively, and all property exempt by law from levy or sale on execution. ....

....

....

Subscribed and sworn to before me, this .. day of .... A. D., 189..

....

(Subpœna.)

THE UNITED STATES OF AMERICA, TERRITORY OF OKLAHOMA.

To ____ *greeting:* You are hereby commanded that, laying aside all business and excuses, you appear in person before the District Court of the Territory of Oklahoma in and for the ____ Judicial District thereof, to be held before the Judge of the said Court, at ____ in said district, on the ____ day of ____, A. D. 189—, at ____ o'clock — M., to testify on behalf of the United States, all and singular, those things which you know in a certain cause now pending in the said court, wherein the United States is plaintiff, and ____ defendant—; and this you shall in no wise omit, under the penalty of the law.

Witness, The Hon. ——, judge of the said court, and seal thereof, at —— in said district, this —— day of——, 189—.

—— ——, Clerk.

(**Bail Bond—U. S. Commissioner.**)

Know all men by these presents: That we, ———, as principal, and ———, as sureties, are bound unto the Territory of Oklahoma, United States of America, in the sum of ——— dollars, for the payment of which we bind ourselves, our heirs, executors, and administrators.

The condition of the above bond is, that whereas, the said ——— was, on the — day of ——, 189—, brought before me, ———, a Commissioner of the United States District Court for the Territory of Oklahoma, charged on the oath of ——— with having, on the — day of ——, 189—, and within the said Territory, ———; and Whereas, upon examination of the said ——— for the said offense, the said Commissioner found that there was probable cause to believe the said ——— guilty, and required the said ——— to give bail in the sum of ——— dollars, for his appearance at the next term of the District Court of said Territory, ——— District. Now, therefore, if the said ——— shall appear in his own proper person before the said district court for ——— district, at its next term thereof, to be held in the City of ———, in said district, on Monday, the — day of ——, A. D. 189—, and not depart therefrom without leave of the court, then this bond shall be void; otherwise to remain in full force.

In witness whereof, we have hereunto set our hands and seals, this — day of ——, A. D. 189—.

—— —— [SEAL.]
—— —— [SEAL.]
—— —— [SEAL.]
—— —— [SEAL.]

Signed and acknowledged before, and approved by me, this — day of ——, A. D. 189—.

—— ——, U. S. Court Commissioner in and for said Territory.

(**Warrant for Arrest.**)

THE UNITED STATES OF AMERICA, TERRITORY OF OKLAHOMA, SS.

To the Marshal of the Territory of Oklahoma, greeting: You are hereby commanded, that you take ———, if he shall be found in said Territory, and him safely keep, so that you may have his body before the District Court of the said Territory, ——— District, to be held in ———, in said district, before the judge of said court, on the — day of —— next, to answer unto a certain indictment for ———, which has been returned against him unto our said court, by the grand inquest of the United States in and for said Territory; and hereof fail not, and have you then and there this writ, with the return of your doings thereon.

Witness, the ———, judge of the said court, at ———, in the said district, this — day of ——, A. D. 189—.

—— ——, Clerk.

CONVEYANCING.

(Warranty Deed.)

Know all men by these presents: That ———, of ——— County, and Territory of Oklahoma, in consideration of the sum of ——— dollars, in hand paid by ———, of ——— County, and ———, of ———, do hereby sell and convey unto the said ———, the following described premises, situated in the ——— County of said Territory, to wit: ———, with the appurtenances thereof, ———. To have and to hold the said premises, with the appurtenances, unto the said ——— and heirs and assigns forever. And — hereby covenant— with the said ——— that —— have good and perfect title to said premises; that they are free and clear of all incumbrances. And —— will warrant and defend the same against the lawful claims of all persons whomsoever. ———. And the said ———, hereby relinquishes her right of dower in and to the above described premises.

Signed this — day of ——, 189— —— ——

IN PRESENCE OF —— ——, —— —— —— ——

—— ——

—— ——

TERRITORY OF OKLAHOMA, —— COUNTY, SS.

On this —— day of ——, A. D. 189—, before me, the undersigned, a —— within and for said county, personally came ——, to me personally known to be the identical person whose name —— affixed to the above instrument as grantor, and acknowledged the execution of the same to be —— voluntary act and deed, for the purposes therein expressed ——.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, at ——, on the date last above written.

—— ——, —— within and for said county.

(Quit-Claim Deed.)

Know all men by these presents, That _____, of _____ County, in the Territory of Oklahoma, in consideration of _____ dollars, to me paid by _____, of _____ do hereby quit claim and release unto the said _____, his heirs and assigns, all my interest and estate in the following described premises, situated in _____ County, Territory of Oklahoma, to wit: _____.

Witness my hand and seal, this _____ day of _____, 189—.

IN PRESENCE OF _____ _____ _____ _____ [SEAL.]

[Acknowledgment, same as warranty deed.]

(Real Estate Contract.)

I, _____, of _____ County, Territory of Oklahoma, hereby agree to make and deliver to _____ my _____ warranty deed, conveying to _____ in fee simple, and free from encumbrance, the real estate hereinafter described, situated in _____ County of said Territory (or the State of _____) so soon as _____ shall have paid to the lawful holder thereof _____ promissory notes this day given to me, calling for the aggregate sum of $_____ and interest, as consideration for this contract and for said deed; full payment to be made on or before the _____ day of _____, 189—. And upon the further condition, that the said _____, or his assigns, shall then have paid all the taxes, before then levied on said real estate, and not otherwise. Said real estate is described as follows, to wit: ____. And under this contract, the said ____ is to have possession thereof, until default is made in the payment aforesaid, or in some other condition herein specified; but in case of any such default, I am to be allowed to regain possession, without judicial process, and to retain rents and profits, until said payment is made in full, and all other conditions hereof are complied with by the vendee or his assigns. Executed in duplicate, this ____ day of ____, 189—. ____ ____

IN PRESENCE OF ____ ____ ____ ____ ____ ____

TERRITORY OF OKLAHOMA, ____ COUNTY, SS.

On this ____ day of ____, A. D. 189—, before me, the undersigned, a ____ within and for said county, personally came ____, to me personally known to be the identical person whose name ____ affixed to the above instrument as maker, and acknowledged the execution of the same to be ____ voluntary act and deed, for the purposes therein expressed ____.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, at ____, on the date last above written.

____ ____, ____ within and for said county.

(**Mortgage.**)

Know all men by these presents: That ____, in consideration of ____ dollars, in hand paid, do hereby sell and convey unto ____ the following described real estate, situate in the ____ County and Territory of Oklahoma, to wit: ____, with the appurtenances, and ____ do hereby covenant with the said ____ heirs and assigns, that ____ lawfully seized of said premises, that they are free from incumbrance, and I will ____ warrant and defend the said premises against the lawful claims of all persons whomsoever. ____: *Provided, Always,* and these presents are upon this condition: That, whereas, said ____ executed and delivered to said ____ promissory note for the payment of ____. Now, if the said ____ shall pay, or cause to be paid, the said sum of money in said note__ mentioned, with the interest thereon, according to the tenor and effect of said note__, then these presents shall be null and void. But if said sum of money, or any part thereof, or any interest thereon, is not paid when the same is due, or if the taxes and assessments of every nature which are assessed or levied against said premises, are not paid at the time when the same are by law due, then the whole of said sum shall immediately become due, and upon forfeiture of this mortgage as aforesaid, or in case of default in any of the conditions herein provided, the said ____ shall be entitled to the immediate possession of said premises. And in the event of the foreclosure of this mortgage by suit, a reasonable sum, to be determined by the court, shall be awarded in addition to the judgment. ____

Signed this ____ day of ____, A. D. 189—. ____ ____

IN PRESENCE OF ____ ____ ____ ____ ____ ____

____ ____

TERRITORY OF OKLAHOMA, ____COUNTY, SS.

On this ____ day of ____, A. D. 189—, before the undersigned, ____, a____ in and for said county, personally came the above named ____, who is ____ personally known to me to be the identical person__, whose name ____ affixed to the above instrument as grantor__ and ____ acknowledged the instrument to be ____ voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and ____ seal, the date above written.

____ ____, in and for said County.

(Chattel Mortgage.)

Know all men by these presents: That I, ____ of the ____ County, and Territory of Oklahoma, in consideration of the sum of ____ dollars, to me in hand paid, by ____, of ____, party of the second part, do hereby grant and convey unto the said party of the second part, the following goods and chattels, to wit: ____. The above described chattels are now free from all incumbrances; and I will forever warrant and defend the same against all persons whomsoever; upon condition, however, that if the said ____ shall pay to the said ____, his heirs, assigns, his ____ promissory note–, dated ____, and described as follows, to wit: One for ____ dollars, payable ____, 18—; one for ____ dollars, payable ____, 18—; one for ____ dollars, payable ____, 18—; and one for ____ dollars, payable ____, 18—; with interest at the rate of ____ per cent per annum, according to the tenor thereof: then these presents to be void; otherwise in full force. But in case of any default in the payment of the above-mentioned promissory note, or in case of my attempting to dispose of or remove from said county the aforesaid goods and chattels, or any part thereof, or in case the mortgagor fails to keep said property insured against fire loss in a sum equal to the mortgage debt, for the benefit of the mortgagee, or in case the said mortgagee shall at any time deem himself unsafe, then and in that case it shall be lawful for the said mortgagee, or his assigns, by himself or agent, to take immediate possession of said goods and chattels hereunder, and to sell, so much thereof as shall be sufficient to pay the amount due or to become due, as the case may be, with costs of keeping, advertising and selling. The money remaining after paying said sums, if any, to be paid on demand to the said party of the first part. Said sale to take place at ____, in the ____ County, of Oklahoma, after giving at least ____ days' notice of such sale, by advertisement thereof in some newspaper published in said county. And I hereby further authorize the person conducting said sale to adjourn the same, if deemed in his opinion necessary, from time to time, until said property be sold, which shall convey absolutely all of my right and title to said property.

Witness my hand and seal, this — day of ____, 189—.

IN PRESENCE OF ____ ____ ____ [SEAL.]

TERRITORY OF OKLAHOMA, ____ COUNTY, SS.

Be it remembered, that on this — day of ____, 189–, before the undersigned, ____, a ____ in and for said county, personally came ____, to me known to be the identical person— whose name ____ affixed to, and who executed the foregoing instrument as grantor—, and acknowledged the same to be ____ voluntary act and deed, for the uses and purposes therein set forth.

Witness my hand and ____ seal, the day and year last above written.

____ ____

TERRITORY OF OKLAHOMA, ____ COUNTY, SS.

I, ____, a notary public within and for said county, hereby certify that the foregoing is a true copy of a chattel mortgage this day executed between the within named parties.

Witness my hand and notarial seal, this ——— day of ———, 189–.

——— ———, Notary Public.

For value received, I hereby assign to ——— the within mortgage and notes accompanying the same, and authorize ——— to collect and discharge the same. ———, 189–. ——— ———, Mortgagee.

(Contract of Lease.)

I, ———, of ——— County, Territory of Oklahoma, have leased to ——— hereby, the premises hereinafter described, situated in said county, for the term of ——— years [or months], commencing at the date hereof, and ending at noon on the — day of ———, 189—, and placed ——— in possession, for said term. I have received ——— promissory note– for the rent agreed on, calling for the aggregate sum of $———, to be fully paid on or before the — day of ———, 189—. * ———. The aforesaid premises are described as follows, to wit: ———. And it is expressly stipulated that the lessor, and his assigns, are to have a lien as provided in the laws of Nebraska, on all the personal property of the lessee, used on said premises, including growing crops, to secure the performance of all the conditions hereof; and in case of the lessee's default in said payments, or in the performance of any other conditions herein contained, the lessor will be permitted to regain possession, without judicial process, and hold the premises until said payment is made, and said conditions are fully performed. Signed in duplicate, this — day of ———, 189–.

——— ———

IN PRESENCE OF ——— ———

——— ———

——— ———

---

* Insert in this blank any other conditions agreed on by the parties.

TERRITORY OF OKLAHOMA, ——— COUNTY, SS.

On this ——— day of ———, A. D. 189—, before me, the undersigned, a ——— within and for said county, personally came ———, to me personally known to be the identical person whose name ——— affixed to the above instrument as grantor, and acknowledged the execution of the same to be ——— voluntary act and deed, for the purposes therein expressed ———.

In witness whereof, I have hereunto subscribed my name and affixed my official seal, at ———, on the date last above written.

——— ———, ——— within and for said county.

(Bill of Sale.)

Know all men by these presents: That ———, for and in consideration of the sum of ——— dollars, in hand paid by ———, have bargained and sold, and hereby convey unto the said ——— the following personal property, to wit: ——— belonging to ———, and now in ——— possession. To have and to hold the same unto the said ——— executors, administrators and assigns forever. And ——— do hereby agree with the said ———, that I will warrant and defend this sale of said property, against the lawful claims of all persons whomsoever.

In witness whereof, ——— have hereunto set ——— hand and seal, this ——— day of ———, 189—.

SIGNED AND DELIVERED IN PRESENCE OF ——— ———

——— ——— ——— ———

——— ——— ——— ———

DISTRICT COURT.

(Summons.)

DISTRICT COURT OF THE TERRITORY OF OKLAHOMA, U. S. A., ss.

The Territory of Oklahoma to the Marshal of the said Territory, greeting: You are hereby commanded to notify ——— that-he— ha— been sued by ———, in the District Court of the Territory of Oklahoma, United States of America, for the ——— ditsrict thereof, and that unless -he— answer, by the — day of ——, A. D. 189—, the petition of the said ——— against ———, filed in the clerk's office of the said court, such petition will be taken as true, and judgment rendered accordingly. You will make due return of this writ on the — day of ——, A. D. 189—.

Witness: The Hon. ———, judge of the district court of said Territory for the ——— District, and seal thereof, at ———, in said district, this — day of ——, A. D. 189—.

—— ——, Clerk.

(Subpœna.)

THE UNITED STATES OF AMERICA, TERRITORY OF OKLAHOMA.

To ———, *greeting:* You are hereby commanded, that laying aside all business and excuses, you appear in person before the District Court of the Territory of Oklahoma in and for the ——— Judicial District, to be held before the judge of the said court, at ———, in said district, on the — day of ——, A. D. 189—, at — o'clock A. M., to testify on behalf of the United States, all and singular those things which you know in a certain cause now pending in said court, wherein the United States is plaintiff, before the grand jury; and this you shall in no wise omit, under the penalty of the law.

Witness, the Hon. —— ——, judge of said the court, and seal thereof, at ———, in said district, this — day of ——, A. D. 189—.

—— ——, Clerk.

(Bond on Capias.)

UNITED STATES OF AMERICA, TERRITORY OF OKLAHOMA, ss.

Know all men by these presents: That we, ———, as principal, and ———, as sureties, are held and firmly bound unto the Territory of Oklahoma, United States of America, in the sum of ——— dollars, for the payment of which we bind ourselves, our heirs, executors and administrators.

The condition of the above bond is, that whereas, the said ——— was, at the —— term, A. D. 189—, of the United States District Court for the —— District of said Territory ———; and whereas, afterwards, to wit, on the — day of ——, A. D. 189—, said ——— was duly arrested by the United States Marshal of said Territory, under and by virtue of a capias issued out of said court; and whereas, the said Marshal has, by the order of the said court, been authorized to take bail for said ——— in the sum of ——— dollars, for his appearance at the next term of the said court: Now, therefore, if the said ——— shall appear in his own proper person before the said district court, at the next term thereof, to be holden in the City of ———, in said district, on Monday, the — day of ——, A. D. 189—, and not depart therefrom without leave of the said court, then this bond shall be void; otherwise to remain in full force.

In witness whereof, we have hereunto set our hands and seals, this — day of ——, A. D. 189—

—— —— [SEAL.]
—— —— [SEAL.]
—— —— [SEAL.]
—— —— [SEAL.]
—— —— [SEAL.]

Signed in the presence of and acknowledged before me, this the — day of ——, A. D. 189—.

—— ——, U. S. Marshal for Oklahoma Territory.
By —— ——, Deputy.

(Execution.)

TERRITORY OF OKLAHOMA, ——— DISTRICT COURT, SS.

To the Marshal of the Territory of Oklahoma, greeting: Whereas, ———, on the — day of ——, A. D. 189—, obtained judgment before the District Court of the Territory of Oklahoma, United States of America, for the ——— Judicial District, sitting in ——, within and for the said district, against ——— for the sum of ——— dollars, debt, and interest from the date of said judgment, at ——— per cent per annum; and also for the sum of ——— dollars, as costs in this behalf expended, with ——— dollars, costs on this and previous executions.

These are, therefore, to command you, that of the goods, chattels, lands, tenements and chattels real of the said ———, you cause to be made the debt, interest, damages and costs aforesaid; and that you have the same before the court aforesaid in sixty days from this date, in the city of ———, and that you then and there certify how you have executed this writ.

Witness, Hon. ———, judge of said court, with the seal of said district court affixed, at ———, in said district, this — day of ——, 189—.

—— ——, Clerk.

(Claim of Witness Fee.)

UNITED STATES OF AMERICA, TERRITORY OF OKLAHOMA, SS.

In the District Court, —— District. —— *vs.* ——. I, the undersigned, being first duly sworn, on oath do say that I have attended said court as witness in above entitled action, on behalf of ——, during the —— term, 189—, of said court, —— days, and have necessarily and actually traveled —— miles in going to and returning from said court as such witness, and that I have not claimed fees in any other case covering the same period of time, or same travel, and that I have not claimed fees for services as a juror during the same period of time. —— ——

Sworn to and subscribed before me, this — day of ——, 189—.

—— ——, Clerk.

COUNTY.

(Affidavit on Application for Marriage Licence.)

I, —— of —— County, Territory of Oklahoma, aged —— years, do solemnly swear that I am acquainted with Mr. —— and M ——, who are parties to the proposed marriage herein named; that said —— is of the age of —— years and upward, of sound contracting mind, and unmarried* ——;

that said —— is of the age of —— years and upward, of sound contracting mind, and unmarried;* that they are not related, within the prohibited degrees; and that they may lawfully contract marriage. I furthermore swear that the following schedule, containing the names of the aforesaid parties, their age, color, place of birth, residence, and parents' names, is correct in every particular, to the best of my knowledge, information and belief, to wit:

Names of parties.	*Age.*	*Color.*	*Place of birth.*	*Residence.*	*Father's name.*	*Mother's maiden name.*
——*Groom*						
——*Bride*						

License for said marriage is hereby applied for.

—— ——, Applicant.

Subscribed and sworn to before me, ——, 189—.

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*If either party is under age, the written consent of their parents must be filed, in which case the affidavit should show the fact as follows: "And has the written consent of his (or her) parents."

(Marriage License.)

TERRITORY OF OKLAHOMA, —— COUNTY, SS.

OFFICE OF THE COUNTY JUDGE.

License is hereby granted to any person authorized to solemnize marriages according to the laws of said Territory, to join in marriage Mr. —— and M—— of the county aforesaid, whose ages, residence, etc., are as follows:

Names of parties.	*Age.*	*Color.*	*Place of birth.*	*Residence.*	*Father's name.*	*Mother's maiden name.*
——Groom						
——Bride						

And the person joining them in marriage is required to make due return of the annexed certificate to the county judge of said county within ninety days, of the names of the parties, time and place of marriage, and by whom solemnized.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at my office in said county, this — day of ——, A.D. 189—.

—— ——, Judge.

(Certificate of Marriage.)

TERRITORY OF OKLAHOMA, SS.

To the County Judge of —— *County:* This certifies, that on the — day of ——, A. D. 189—, at ——, in said county, according to law and by authority, I duly join in marriage Mr. * —— and M—— and there were present as witnesses ——. Given under my hand the — day of ——, A. D. 189—.

—— ——.

WITNESSES. —— ——,

—— —— —— —— —— ——, Parties.

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* Names in full; and must be signed at bottom by the parties and witnesses. See Chap. 397, Laws of 49th Congress, Vol. 24, p. 636.

(Stay Bond.)

Know all men by these presents: That ____ as principal, and ____ and ____ as sureties, are bound unto ____, in the penal sum of ____ dollars, for the payment of which we bind ourselves by these presents. The condition of this obligation is such, that if the said ____ shall well and truly pay, according to law, the amount of a certain judgment recovered by said ____, against said ____, at the ____ term of the county court for ____ County, Oklahoma Territory, for the sum of ____ dollars damages, also costs and interest, for the payment of which judgment said ____ and have acknowledged themselves security, then this obligation to be void; otherwise in full fo rce and effect.

Signed this — day of ____, 189_.

IN PRESENCE OF

____ ____,

____ ____ ____ ____,

____ ____ ____ ____, Sureties.

TERRITORY OF OKLAHOMA, ____ COUNTY, SS.

____ and ____, being first duly sworn, say that both are resident property holders of said county, and each is the owner of real estate, not exempt from execution, and of the value of $____ above incumbrances.

____ ____

____ ____

Subscribed in my presence, and sworn to before me, this—day of ____, 189_. ____ ____, Judge.

Approved before me, ____, 189_. ____ ____, County Judge.

(Justification of Surety.)

TERRITORY OF OKLAHOMA, ____ COUNTY, SS.

In County Court of ____ County, Territory of Oklahoma. ____ *vs.* ____.

____, being duly sworn, on oath, says that he is a proposed surety for ____, in the above-entitled action, and that he is a resident property holder of said county; that he has an interest in land situate in said county, of the value of $____ over and above all incumbrances thereon, and homestead exemption; and that he is worth in personal property, subject to execution, situate in said county, the sum of $____ over all his debts and liabilities.

Sworn to and subscribed before me, and in my presence, ____, 189_.

____ ____ ____ ____ ____ ____, County Judge.

(Undertaking in Attachment.)

TERRITORY OF OKLAHOMA, ____ COUNTY, SS.

____ *vs.* ____. In the ____ Court of said county. We, the undersigned, bind ourselves to the defendant, in the above action, in the sum of $____, conditioned that the plaintiff, ____, will pay the defendant all damages, not exceeding $____, which he may sustain by reason of the issuance of the writ of attachment in this action, if the order therefor be wrongfully obtained, or the same be dismissed.

____ ____

____ ____

Signed, acknowledged, and approved, by and before me, this — day of ____, 189_. ____ ____, County Judge.

(**Notice to Garnishee.**)

TERRITORY OF OKLAHOMA, ——— COUNTY, ss.

——— *vs.* ———. In the County Court of said county. To ———: You are hereby notified to appear on the first day of the next term of the county court, of ——— county, at the court room thereof, on the — day of ———, 189—, at 9 o'clock A. M., there to answer under oath all questions that may be put to you, touching the property of every description of ———, defendant, in an action against ———, pending in said court, wherein ——— is plaintiff, in your possession, or under your control. And this you will do, under the penalty of the law. Dated at ———, the — day of ———, 189—.

——— ———

(**Attested Account to Obtain a Mechanics' Lien.**)

TERRITORY OF OKLAHOMA, ——— COUNTY, ss. ——— 189—.

———, being duly sworn, says that the account hereto annexed, marked "Exhibit A," is a true and correct account of the labor performed and materials furnished by ———, to and for the said ———, at said county, and that the prices thereof set forth in said account are just and reasonable, and that there remains due and unpaid thereon the sum of ——— dollars. That said labor was performed and said materials were furnished at the time in said account mentioned, under and by virtue of a ——— written contract between said ——— and said ———, (a copy of which contract is hereto annexed, marked "Exhibit B.") That said labor was performed and said materials were furnished in good faith, for the purpose of * ——— a certain ———, standing on a lot of land hereinafter described. And this affiant says that the said ——— was, at the time said contract was entered into, and said labor was performed and said materials were furnished, the owner of said ———; and that said building is situated upon a certain lot of land owned by said ———, and which said lot of land is described as follows, to wit: ———; situated in the ——— County of Oklahoma Territory, and known as ———. And this affiant further says, that said ———, the legal owner ——— of the above-mentioned claim. The said ——— claims a lien in the premises.

——— ———

Sworn to by said ———, before me, and by him subscribed in my presence, this — day of ———, 189—.

——— ———,

——— in and for the County aforesaid.

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* Here insert "Constructed," "Altered," or "Repairing," as the case may be.

(**Summons.**)

TERRITORY OF OKLAHOMA, ... COUNTY, ss.

To the sheriff or any constable of said county: You are commanded to summon . . . ., to appear at the county court, in the city of . . . ., on the . . day of . . . ., A. D. 189. ., to answer the action of . . . ., who sues to recover the sum of $. . . ., due . . . . You will make return of this writ, on the . . day of . . . ., A. D. 189. .

Witness my hand and official seal, this . . day of . . . ., A. D. 189. .

. . . ., County Judge.

If the defendant fails to appear, plaintiff. . will take judgment by default, for $. . . ., and all costs of suit, not to exceed fifty dollars.

(Return.)

On ...., 189.., I received this writ, and on .... 189.., I served the same by .... a certified copy of this writ, and endorsements thereon ...., the defendant, in .... County, Oklahoma. Fees: ....

(Subpœna.)

TERRITORY OF OKLAHOMA, ... COUNTY, SS.

To the sheriff or any constable of said county: You are commanded to summon ...., to be and appear before me at the county court of said county, at my office, in the city of ...., on the .. day of ...., A. D. 189.., at .. o'clock in the ....noon of said day, to give evidence in a cause then and there to be tried, wherein .... plaintiff, and .... defendant, on the part of.... You will make return of this subpœna on the .. day of ...., A. D. 189..

Witness my hand and official seal, this .. day of ...., A. D. 189..

.... County Judge.

(Attachment for Witness.)

TERRITORY OF OKLAHOMA, ... COUNTY, SS.

To the sheriff, or any constable of said county, greeting: You are hereby commanded to attach .... so as to have his body before me, the county judge of said county, at the county court room, in the city of ...., on the .. day of ...., A. D. 189.., at 9 o'clock A. M., to answer the said Territory, of a certain contempt by him lately committed, as is alleged, in disobeying a subpœna, issued by me and duly served, and then also to give testimony in an action pending before me, wherein .... is plaintiff, and .... is defendant; and of this writ make legal service and due return.

Witness my hand and official seal, this .. day of ...., A. D. 189..

...., County Judge.

(Commitment upon Continuance.)

TERRITORY OF OKLAHOMA, ... COUNTY, SS.

To any constable of said county: ...., being under examination before me, charged with the commission of the crime of ...., on good cause shown, I have this day postponed the trial of said charge and complaint until the .. day of ...., A. D. 189.., at .. o'clock, .. M., at my office in said county, and the said .... has been required by me, to enter into a recognizance, conditioned that he would appear before me at said time and place to answer the said complaint, and has .... so to do. You are hereby commanded, that you do forthwith take the said .... and commit him to the county jail of said .... County, there to remain until the said .. day of ...., A. D. 189.., at .. o'clock, .. M. And you will make due return to me of this writ.

Witness my hand at my office in ...., in said .... County, this .. day of ...., A. D. 189.. ...., Justice of the Peace.

(Venire.)

TERRITORY OF OKLAHOMA, ... COUNTY, SS.

To the sheriff or any constable of said county: You are hereby commanded to summon ...., to be and appear before the undersigned, county judge of said county, at the county court room, in the city of ...., on the .. day of ...., 189.., at .. o'clock in the ....noon, to serve as jurors in the action of .... against ...., then and there to be tried; and this they shall in no wise omit, under penalty of the law. And have you then and there this writ, with your doings thereon.

Witness my hand, and the seal of the county court for said county, at ...., this .. day of ...., 189.. ...., County Judge.

(**Search Warrant.**)

Territory of Oklahoma, ... County, ss.

To ...., constable of ...., said county: It appearing that there are reasonable grounds for believing that the following property, to wit: ...... claimed by ...., has been feloniously and unlawfully taken, stolen, and carried away, and embezzled, secreted, or converted to the use of ...., is concealed in .... You are, therefore, hereby commanded, forthwith, to search said place, and seize and bring said property before me, at my office in said township. And then and there return this writ.

Witness my hand, at ...., in said county, this .. day of ...., A. D. 189.. ...., Justice of the Peace.

(**Writ of Habeas Corpus.**)

Territory of Oklahoma, ... County, ss.

The Territory of Oklahoma to the sheriff of .... County, greeting: We command you that the body of ...., imprisoned and restrained of his liberty, as it is said, now in your custody, you have before ...., a judge of our .... court, in said county; or, in case of his absence or disability, before some other judge of the said Territory, at ....; forthwith to do and receive what the said judge shall then and there consider in his behalf; and that you summon the said ...., to appear then and there before said judge, to show the cause of his detention of the said ....; and have you there this writ with your doings thereon.

Witness .... at ...., this .. day of ...., 189.. ....

[L. S.]

(**Attachment.**)

Territory of Oklahoma, ... County, ss.

.... *vs.* .... Case No. .. In the County Court of said County:

To the sheriff or any constable of said county: You are commanded to attach and safely keep the goods, chattels, stocks, or interests in stocks, rights, credits, moneys and effects of the said defendant, ..., in your said county, not exempt by law from forced sale ...., or so much thereof as will satisfy .... claim for .... dollars, and to cover costs, not exceeding fifty dollars. You will make return of this order, on the .. day of ...., A. D. 189..

Witness my hand, and official seal, this .. day of ...., A. D. 189..

...., County Judge.

(**Affidavit for Replevin.**)

In the County Court for .... County, Territory of Oklahoma. .... *vs.* ....

Territory of Oklahoma, ... County, ss.

.... being by me first sworn, saith, that .... has commenced, in the county court for said county, a civil action against the said ...., defendant, to recover possession of the following specific personal property, to wit: ....; and that the said .... plaintiff.., is ...., and is entilted to the immediate possession of the said property; that said goods and chattels are wrongfully detained from said plaintiff by the said defendant..; that the said goods and chattels were not taken in execution on any order or judgment against said plaintiff..; or for the payment of any tax, fine, or amercement assessed against him, or by virtue of any order of delivery issued under the replevin statute of Nebraska, or on any other mesne or final process issued against the said plaintiff. ....

Signed in my presence, and sworn to before me, this .. day of ...., 189..
...., County Judge.

(**Writ of Replevin.**)

TERRITORY OF OKLAHOMA, ... COUNTY, SS.

To the sheriff or any constable of said county: You are commanded to summon ...., to appear before the undersigned, county judge of said county, at the county court room, in the city of ...., on the .. day of ...., A. D. 189.., at nine o'clock A. M., to answer the action of ...., for ...., wrongfully detaining the following described property of the said ...., to wit: And you are further commanded immediately to seize and take into your custody, wherever the same may be found in said county, the said goods and chattels above mentioned, and deliver the same to the said ...., upon .... giving the undertaking required by law. You will make return of this writ, on the .. day of ...., 189..

Witness my hand, and official seal, this .. day of ...., 189..
...., County Judge.

(**Execution.**)

TERRITORY OF OKLAHOMA, ... COUNTY, SS.

To the sheriff or any constable of said county: Whereas, on the .. day of ...., 189.., ... obtained judgment against .... before the county court of said county for .... dollars damages, and .... dollars cost, which judgment with increase costs is unsatisfied. You are, therefore, commanded to collect the amount due on said judgment as aforesaid, and the accruing costs hereon, out of the personal property of the said ...., and pay the same to the party entitled thereto, and make return of this execution, showing the manner in which you have executed the same, in thirty days after receipt hereof.

Witness my hand and official seal, this .. day of ...., A. D 189..
...., County Judge.

(**Vendi.**)

TERRITORY OF OKLAHOMA, ... COUNTY, SS.

To the sheriff or a constable of said county: You are hereby commanded, that those goods and chattels of ...., to wit: .... which were heretofore levied upon by ...., and which remain unsold, you expose to sale, to satisfy a certain judgment obtained by ...., against ...., before the undersigned, county judge for said county, for $...., and $.... costs, on the .. day of ...., 189.., upon which judgment there is due $...., with interest, from ...., 189.., until paid, and $.... costs of increase on said judgment, and the costs accruing hereon. And make return of this writ, and your doings thereon, in thirty days from the date hereof.

Witness my hand, and official seal, this .. day of ...., 189..

...., County Judge.

(**Affidavit for Garnishee Summons.**)

In the County Court, ... County, Territory of Oklahoma. .... *vs.* ....

TERRITORY OF OKLAHOMA, ... COUNTY, ss. Case No. ..

...., being first duly sworn, says he is the .... plaintiff in the above entitled action; that the plaintiff recovered a judgment therein against the said defendant, on the .. day of...., A. D. 189.. That there is now due on said judgment the sum of $....; that an execution issued on said judgment has been returned unsatisfied. And affiant further says, that he has good reason to, and does believe, that ...., in said county, has property of and is indebted to the said judgment debtor. ....

Signed in my presence, and sworn to before me, this .... day of ...., 189.. ...., County Judge.

(**Garnishee Summons.**)

TERRITORY OF OKLAHOMA, ... County, ss.

To the sheriff or any constable of said county: You are commanded to summon .... to appear before the undersigned, county judge of said county, at the county court room, in the city of ...., on the .. day of ...., A. D. 189.., at nine o'clock A. M., to answer such interrogatories as shall be propounded to .... touching the goods, chattels, rights and credits of .... in .... possession or control; and which may come to .... possession or control before the return of this writ. You will make return of this writ on the .. day of ...., 189..

Witness my hand and official seal, this .. day of ...., 189..

...., County Judge.

(**Affidavit for Attachment and Garnishment.**)

.... *vs.* ..... In the County Court for .... County, Territory of Oklahoma.

TERRITORY OF OKLAHOMA, ... COUNTY, ss.

.... being duly sworn, deposes and says that the said plaintiff.. ha.. commenced an action in said court against the said defendant.. to recover the sum of $...., now due and payable to said plaintiff from said defendant on ....; affiant further says that said claim is just, and that he believes the plaintiff ought to recover the sum of $....; affiant further says that the said defendant ....; and affiant further says that he has good reason to believe, and does believe that .... has property of ...., and is indebted to the said defendant in a sum of money to the affiant unknown. ....

Subscribed in my presence, and sworn to before me, this .. day of ...., 189.. ...., County Judge.

(**Order of Attachment and Garnishment.**)

TERRITORY OF OKLAHOMA, ... COUNTY, ss.

.... *vs.* .... In the County Court of said County.

To the sheriff or any constable of said county: You are hereby commanded to attach and safely keep the goods, chattels, stocks, or interest in stocks, rights, credits, moneys and effects of the above-named defendant. . in your county, not exempt by law from forced sale, or so much thereof as will satisfy the said plaintiff. . claim for . . . . dollars. . . . , and fifty dollars, the probable cost of this action. And, whereas, the said plaintiff. . ha. . filed in this court the affidavit of . . . . , that he has good reason to, and does believe, that . . . . , in said county, has property of the defendant. . in . . . . possession, or under . . . . control; you are therefore commanded, if you cannot come at such property, to summon the said . . . . , according to law, to appear before this court, on the . . day of . . . . , A. D. 189. . , at 9 o'clock A. M., to answer under oath, all questions put touching the property of the defendant. . in . . . . possession, or under . . . . control. You will make due return of this order, on the . . day of . . . . , A. D. 189. .

Witness my signature, and the seal of said court, at . . . . , this . . day of . . . . , A. D. 189. . . . . , County Judge.

(Appeal Undertaking.)

. . . . *vs.* . . . . In the County Court, ... County, Oklahoma Territory. Whereas, on the . . day of . . . . , 189. . , ... recovered a judgment against . . . . in said court, for the sum of $. . . . and costs taxed at $. . . . , and the said . . . . intends to appeal said cause to the district court of . . . . County. Now, therefore, I, ... , do undertake to the said . . . . in the sum of . . . . dollars, that the said . . . . shall prosecute his appeal to effect, and without unnecessary delay, and that said appellant, if judgment be adjudged against him on the appeal, will satisfy such judgment and costs.

. . . .

Executed in my presence, and surety approved by me, this . . day of . . . . , 189. . . . . , County Judge.

PROBATE.

(Petition for Appointment of Guardian.)

TERRITORY OF OKLAHOMA, ____ COUNTY, ss.

To the county court of said county: Your petitioner, ____, represents to this court that ____, aged — years; ____, aged — years; ____, aged — years, minor heir_ of ____, deceased, have property in this Territory, which is liable to waste, or diminish in value, if speedy care be not taken of the same. To the end thereof that the said property may be taken care of until said heir_ become_ of age, your petitioner asks the court to appoint ____, guardian of such minor heir_.

____ ____

TERRITORY OF OKLAHOMA, ____ COUNTY, ss.

I, ____, being duly sworn, say that I am the petitioner in the foregoing petition named; that I have read the same, and know the contents thereof, and that the same is true, as I verily believe. ____ ____

Signed and sworn to by ____, before me, this — day of ____, A. D. 189—. ____ ____

(Order for Letters of Guardianship.)

TERRITORY OF OKLAHOMA, ss.

In the matter of the guardianship of ____, minor. In the County Court of ____ County. This cause came on for hearing on the — day of ____, 189—, upon the petition of ____ for the appointment of ____ as guardian of ____, minor heirs of ____, deceased, and it being shown that ____ is a resident of said ____ County and a suitable person, and that it is necessary that a guardian should be appointed for said minors, it is, therefore, ordered by the court that said ____ be and he hereby is appointed guardian of said ____, to act as such upon ____ giving bond in the sum of $____, with two or more sureties, to be approved by me.

____ ____, County Judge.

(Letters of Guardianship.)

TERRITORY OF OKLAHOMA, ____ COUNTY, ss. In County Court.

To all to whom these presents shall come, greeting: Whereas, on this — day of ____, A. D. 189–, ____, resident of ____ County, and Territory of Oklahoma, was duly appointed by the said court as guardian for ____, being minor heirs of ____, deceased. These are therefore to authorize and require you, the said ____, to assume and discharge the duties of said appointment, until said heirs arrive at the age of majority.

In witness whereof, I, ____, county judge, have hereto set my hand and the seal of said court, at the court room, at ____, in said county, this — day of ____, A. D. 189–. ____ ____, County Judge.

(Oath of Guardian.)

In the County Court of ____ County, Territory of Oklahoma. In the matter of the guardianship of ____, minor__. Oath of office of guardian:

TERRITORY OF OKLAHOMA, ____ COUNTY, ss.

I, ____, being duly sworn, on oath do say, that ____ will faithfully perform the duties of guardian to the above-named minor__, as prescribed in my letters of guardianship, and according to law, and to the best of my ability; so help me God.

____ ____

Subscribed and sworn to before me, and in my presence, this — day of ____, 189__. ____ ____, County Judge.

(Petition of Minor over Fourteen Years of Age.)

TERRITORY OF OKLAHOMA, ____ COUNTY, ss.

In the County Court of said County. In the matter of guardianship for ____, a minor. To the said court: Your petitioner– respectfully state– that –he— ____ minor– over the age of fourteen years, and ____ resident of said county, and the child— of ____, late of the County of ____, and Territory of Oklahoma, deceased. That said ____ died on the — day of ____, 189—, without having appointed by will or deed a guardian for your petitioner–. That your petitioner– ____ possessed of the following described real estate, to wit: ____, and ____ possessed of personal estate of the value of ____ dollars. Your petitioner ____ desirous for the appointment of a guardian of ____ person– and estate– during ____ minority, and nominate ____ of the said county, for that purpose. Said ____.

____ ____

____ ____

____ ____

(Guardian's Bond.)

TERRITORY OF OKLAHOMA, —— COUNTY, ss. In —— Court, —— 189—

Know all men by these presents: That we, —— as principal, and —— as sureties, of —— County, and Territory of Oklahoma, are bound unto the Territory of Oklahoma, for use of ——, in the penal sum of —— dollars, for the payment of which, we do hereby bind ourselves, our heirs, executors, administrators and assigns, by these presents. Witness our hands and seals, this ——, 189— The condition of the above obligation is such, that if the above bounden ——, who has been appointed guardian for ——, shall make a true inventory of all the real and personal estate of the ward —— that shall come to —— possession or knowledge, and return the same into the court at such time as the law directs; and shall dispose of and manage all such estate and effects according to law, and for the best interests of the ward, ——, and faithfully discharge —— trust as such guardian; and render an account, on oath, of the property in —— hands, including the proceeds of all the real estate which may be sold by ——, and of the management and disposition of such property, within one year after —— appointment, and at such other times as the court shall direct; and shall, at the expiration of —— trust, settle —— accounts with the court, or with the ward ——, or —— legal representatives, and pay over and deliver all the estate and effects remaining in —— hands or due from —— on such settlement, to the person or persons who shall be lawfully entitled thereto; and shall in all other respects perform the duties of guardian as aforesaid, according to law and the orders of court; then this obligation to be void; otherwise to remain in full force and virtue in law.

IN PRESENCE OF —— —— Principal.

—— —— —— ——
—— —— —— —— Sureties.
—— ——

(Notice of Probate of Will.)

Notice of Probate of Will. TERRITORY OF OKLAHOMA, ss.
——, deceased. In County Court, —— County.

The Territory of Oklahoma to the heirs and next of kin of —— deceased: Take notice, that upon filing of a written instrument purporting to be the last will and testament of ——, for probate and allowance, it is ordered that said matter be set for hearing the — day of ——, A. D. 189—, before said county court, at the hour of — o'clock, — M., at which time any person interested may appear and contest the same; and notice of this proceeding is ordered published three weeks successively in the ——, a weekly newspaper published in this Territory, at ——.

In testimony whereof, I have hereunto set my hand and the seal of the county court, at ——, this — day of ——, A. D. 189—.

—— ——, County Judge.

(Letters Testamentary.)

TERRITORY OF OKLAHOMA, —— COUNTY, ss.

To all to whom these presents shall come: Be it known that on the— day of —— 189–, before me, the County Judge of said county, at my office therein, the last will and testament of ——, late of said county, deceased, was proved, and was allowed and admitted to probate by me, and entered of record; and the said ——, having been immediately before his death a resident of the county of ——, by reason whereof the proving and recording of said will, and the granting administration of the goods, chattels and credits of said testator, and also the auditing, allowing, and final discharge of all accounts against said estate, properly belonging to the county court of said county; now, therefore, —— the execu——, having given the bond and taken the oath required by law, administration is hereby granted to h of all and singular the goods and chattels, rights and credits of said deceased, in whosesoever hands the same may be found, and he is authorized to pay and discharge all debts, legacies, and charges chargeable against said estate, or such dividends thereon as shall be ordered and decreed by the county court, and to well and truly discharge and perform all the duties enjoined upon h— by law, and said will. And it is further ordered that said administrat—— be allowed until the — day of ——, 189–, for disposing of the estate and paying the debts and legacies of said deceased.

In testimony whereof, I have hereunto set my hand and affixed my official seal, this — day of ——, 189–.

—— ——, County Judge.

(Oath of Executor.)

Territory of Oklahoma, —— County, ss.

In the County Court of —— County: I do solemnly swear, that I, as ——, of——, will well and truly administer the goods and chattels, rights, credits and effects of said ——, deceased, and pay all just claims and charges against —— estate, so far as the property of said estate shall extend, and the law require; and that I will perform all other acts required of me by law and the letter of authority issued to me, to the best of my ability. So help me God.

Subscribed in my presence, and sworn to before me, this — day of ——, 189—. —— ——, County Judge.

(Petition for Letters of Administration.)

Territory of Oklahoma, ss. In the Probate Court of —— County, ——. In the matter of the estate of ——, deceased. Petition for Letters of Administration.

To the Honorable ——, Judge of the Probate Court of —— County: The petition of —— of said —— County, respectfully shows: That —— died on or about the —— day of ——, 189—, in —— County of said Territory. That the said deceased, at the time of —— death, was a resident of ——, County of ——. That the said deceased left estate in the —— County, Oklahoma, consisting of —— property. That the character of said property, so far as known to your applicant, is as follows, to wit: ——. That said personal estate and effects do not exceed the value of —— dollars, and the annual rents, issues and profits of the real estate do not exceed —— dollars. That the next of kin of said deceased, whom your petitioner believes and alleges to be the heir– at law of said deceased are ——, aged —— years, residing at ——. That due search and inquiry have been made to ascertain if said deceased left any will and testament, but none has been found, and, according to the best knowledge, information and belief of your petitioner, said deceased died intestate. That your petitioner —— of said deceased, and therefore, as your petitioner ____ advised and believe, entitled to letters of administration of said estate: ____. Wherefore, your petitioner– pray– that a day of court may be appointed for hearing this application, that due notice thereof be given by said court according to law, and that upon said hearing, and the proofs to be adduced, letters of administration of said estate may be issued to your petitioner.

Dated, ____, 189—. ____ ____, Petitioner.

TERRITORY OF OKLAHOMA, ____ COUNTY, ss.

____, being duly sworn, deposes and says: That ____ has read the foregoing petition and knows the contents thereof; that the same is true, as ____ believes. ____ ____

Subscribed and sworn to before me, this — day of ____, A. D. 189—.

____ ____

____ ____

(Letters of Administration.)

TERRITORY OF OKLAHOMA, ____ COUNTY, ss. In the County Court.

To all whom these presents shall come, greeting: Know ye, that whereas, ____ of the County of ____ and Territory of Oklahoma, died intestate, on or about the — day of ____, A. D. 189—, at ____ County, having at the time of h____ decease personal property and effects in this Territory. To the end, therefore, that said property and debts may be collected, preserved, administered, and distributed according to law, ____ hereby appointed administrat____ of all and singular the goods, chattels, rights, credits, and effects, which were of the said ____ estate, at the time of ____ decease, with full power and authority to secure and collect the said property and debts, wheresoever the same may be found in this Territory, and in general to do and perform all other acts which now are or hereafter may be required of ____ by law.

In witness whereof, I have hereunto set my hand and affixed the seal of said county court, at my office in ____, this — day of ____, 189–.

____ ____, County Judge.

TERRITORY OF OKLAHOMA, ... COUNTY, ss.

In the county court of .... County: I do solemnly swear, that I, as .... of ...., will well and truly administer the goods and chattels, rights, credits, and effects of said ...., deceased, and pay all just claims and charges against .... estate, so far as the property of said estate shall extend, and the law require; and that I will perform all other acts required of me by law, and the letter of authority issued to me, to the best of my ability; so help me God.

Subscribed in my presence, and sworn to before me, .. day of ...., 189.. .... County Judge.

(Oath.)

TERRITORY OF OKLAHOMA, ____ COUNTY, ss.

____ do solemnly swear or affirm that ____ will well and truly administer all and singular the goods and chattels, rights, credits, and effects of ____ deceased, and pay all just claims and charges against ____ estate, so far as ____ assets shall extend, and that ____ will perform all other acts now or hereafter required by law, to the best of ____ knowledge and ability.

Subscribed and sworn to before me, this ____ day of ____, A. D. 189—.
____ ____ Judge.

____ ____
____ ____

(**Appointment of Appraisers.**)

At a probate court held in and for the ____ County, of Oklahoma Territory, at the office of the Judge of Probate, of the said county, on the — day of ____, 189–. Present: Hon. ____, Judge of Probate. In the matter of the appraisement of the estate of ____, deceased. On the application of the administrat ____, of the estate of ____, late of ____ county, deceased, it is ordered, that ____ be and are hereby appointed to estimate and appraise all the estate of the decedent, except such as is by law exempt from appraisement, a certified copy hereof is their warrant to proceed with said appraisement. By order of the Court. [SEAL.] Attest: ____ ____, Judge.

(**Appraisers' Estimate for the Widow.**)

We, the undersigned appraisers, appointed by the Judge of the County Court of ____ County, Oklahoma Territory, to appraise and value the goods, chattels and personal estate of ____, deceased, do hereby make and certify to said county court the following schedule, and estimate of the value, of each article of specific property, allowed by law to the widow, for herself and family, to wit:

	ITEMS.	DOLLARS.	CENTS.
	Total,		

Given under our hands, this — day of ____, 189–.

____ ____
____ ____
____ ____
Appraisers.

Subscribed an sworn to before me, this — day of ____, A. D. 189–.
____ ____, County Judge.

(**Appraiser's Commission — Personal Estate of Deceased.**)

TERRITORY OF OKLAHOMA, ____ COUNTY, ss.

In County Court, ____ term, 189—. In the matter of the estate of ____, deceased. The Territory of Oklahoma, to ____, of ____ County, in said Territory, greeting: You are hereby appointed appraisers, to appraise all the goods, chattels, effects, and personal estate of the aforesaid ____ deceased, according to the inventory of the same, made out by ____, the ____ of the said estate of ____, deceased. And each of you having first taken the oath hereunto annexed, you will duly make return of the same, and this your appointment, and all your doings in the matter of such appraisement, aforesaid; to the said ____ aforesaid, the same being duly certified by you.

____ ____
____ ____

(Oath of Appraisers.)

We do solemnly swear, that we will faithfully perform the duties of appraisers of the personal estate of ______, deceased and in the manner provided by law; and that we will make a true and just appraisement of said personal estate, to the best of our judgment and ability. So help us God.

Subscribed in my presence and sworn to before me, this — day of ______, 189—.

______ ______

______ ______
______ ______
______ ______
Appraisers.

(Appraisement.)

In the matter of the estate of ______, deceased. We, your appraisers, appointed to appraise the goods, chattels, and personal estate of ______ deceased, would respectfully submit the following valuations:

Number.	*Articles.*	*Value.*	
	Total,		

We hereby certify that the above is a just and true valuation of the goods, chattels, and effects mentioned as belonging to the estate of ______, deceased, aforesaid.

Given under our hands, this — day of ______, A. D. 189—.

______ ______
______ ______
______ ______
Appraisers.

(Probate Notice.)

Territory of Oklahoma, ______ County, ss.

Probate Court of said county. In the matter of the estate of ______, deceased. Notice is hereby given, that the creditors of said deceased, will meet the ______ of said estate, before me, county judge of ______ County, Oklahoma Territory, at the court room, in said county, on the — day of ______, 189—, at 9 o'clock A. M., for the purpose of presenting their claims for examination, adjustment and allowance. Six months are allowed for the creditors to present their claims, and one year for the ______ to settle said estate, from the — day of ______, 189—. This notice will be published in the ______ for four weeks successively, prior to the — day of ______, 189—. ______ ______, County Judge.

(Claim Bill.)

Estate of ______, deceased, in account with ______.

				Dr.		Cr.	

Territory of Oklahoma, _____ County, ss.

_____ being duly sworn, on oath says, that the above account against the estate of _____ deceased, amounting to the sum of _____ dollars and _____ cents, is just, after allowing all just credits, and is now due and unpaid.

_____ _____

Subscribed and sworn to before me, this — day of _____, A. D. 189—.

_____ _____, County Judge.

(Claim Bill—Certified.)

Estate of _____, deceased. In account with _____:

				Dr.		Cr.	

Territory of Oklahoma, _____ County, ss.

_____, administrator, being duly sworn, on oath says, that the above account of claims against the estate of _____, deceased, amounting to the sum of _____ dollars, is correct, after allowing all just credits, and is now due and unpaid.

_____ _____

Subscribed and sworn to before me, this — day of _____, A. D. 189—.

_____ _____, County Judge.

(Order for Citation.)

Territory of Oklahoma, _____ County, ss.

In the County Court, _____ Term, 189—. In the matter of the estate of _____, deceased. On the petition of _____, of the said estate, praying _____. It is ordered, that the said _____ be required to attend before this court on the — day of _____, A. D. 189—, at — o'clock —. m., and show cause, if any there be, why the prayer of petitioner should not be granted; and that a citation issue to the said _____, returnable before the county court at said time and place; and it is further ordered, that a copy of this order be served on the person to whom it is directed, at least — days before the return day thereof.

_____ _____, County Judge.

JUDICIAL DISTRICTS.

[The following Supreme Court order, dividing Oklahoma Territory into three Judicial Districts, should have been inserted on page 993; but was not made until too late for insertion there.]

The First District includes the first and seventh counties, (*Guthrie and Stillwater,*) Judge GREEN.

The Second District includes the fourth, fifth and sixth counties, (*El Reno, Kingfisher and Beaver,*) Judge SEAY.

The Third District includes the second and third counties, (*Oklahoma City and Norman,*) Judge CLARK.

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[KEY.—The **boldface** figures refer to the abridgment of the Nebraska chapters for Oklahoma, and to the original contents of this work; the light figures refer to the paging of the entire volume, as used in that State. Where full sections have been placed in the epitome, they are referred to in both forms.]

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